



ENFORCEMENT UNDERTAKINGS

NHS TRUST:

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

DECISION:

NHS England, on the basis of the grounds set out below and pursuant to its powers under the National Health Service Act 2006 as amended, has decided to accept these undertakings from The Trust.

BACKGROUND:

NHS England accepted enforcement undertakings from The Trust on 3 December 2020 in relation to the Operational performance (A&E), financial performance and governance.

It is noted that some improvements have been made in relation to operational performance (A&E). However, the circumstances in which the organisation is currently operating continue to result in operational performance issues as well as continued financial challenges.

NHS England is now taking further regulatory action in the form of these undertakings which replace and supersede the December 2020 undertakings.

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 expects the Trust to comply with .

“NHS Improvement” means the organisation comprising the statutory bodies of Monitor and the National Health Service Trust Development Authority before their abolition under the Health and Care Act 2022 and the transfer of their functions to NHS England.

GROUNDINGS:

1. **The Trust:** The Trust is an NHS trust all or most of whose hospitals, facilities and establishment are situated in England.
2. **Issues and need for action**

2.1. NHS England 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), (b), (c) and (d).

2.2. Operational issues

2.2.1. **UEC-** the ambulance handover delays remains significantly poor with a lack of sustained improvement to allow EMAS to offload and return to the road. There is poor flow within ED and a lack of timely stages of the UEC pathway. There are delayed waits for admission and bed capacity remains blocked by those awaiting discharge. Discharge pathways are not robust to ensure and allow timely processes to enable discharge prior to 5pm. This leads to failed discharges or complex discharges not able to be transported to their destinations.

2.2.2. **Elective-** Pre-covid, 52 week waits were narrowly avoided through managing the waiting list up to 50 weeks. During covid, this caused a high number of patients to tip into 104 week waits as capacity and surgical capability was severely limited. Since then, the 104 week position whilst improved, has been slow in pace and complex patients remain on the list. This has also seen a rise in both 52 and 78 week waits, which has needed to be closely managed to avoid further 104 week breaches. Elective activity has not returned to above pre-covid levels in all areas.

2.2.3. **Cancer-** due to the lack of availability of ITU/HDU beds and the changes in IPC, cancer performance and activity dropped over the last 2 years. Resulting in longer than usual waits. The return of higher the usual referrals in many specialities saw a backlog growth in long waits, leading to both 62 and 104 day backlogs. Whilst work has been ongoing to improve this position, there is a requirement to ensure there is pace and progress made in the work to eradicate 104 days and reduce the 62 day waiting list.

2.3. Financial issues

2.3.1. The Trust reported a £127.9m deficit in 2019/20 with this value revised to £122.7m in the final audited accounts as submitted in March 2022 for which the auditor gave a “disclaimer” opinion. The deficit is a result of poor accounting practices and misstatements that prevented transparency on income and expenditure in-year. The issues of management override were exacerbated by a culture at Board level that did not challenge what was happening and lack of investment, skill and ability to speak up in the finance team of the time.

2.3.2. The Trust has demonstrated progress in the areas of board governance and financial governance including the submission of the 2019/20 accounts. Areas outstanding include the submission of the 2020/21 and 2021/22 accounts, improvements in financial standing linked with continued financial grip and control, the development of a trajectory of financial improvement plan with a

report of the drivers of the deficit and outline savings plans to be codified as part of a medium-term financial plan.

3. Failures and need for action

These issues demonstrate a failure of governance arrangements including, in particular:

3.1. Failure to establish and effectively implement systems or processes:

- 3.1.1. to ensure compliance with The Trust's duty to operate efficiently, economically and effectively;
- 3.1.2. for timely and effective scrutiny and oversight by the Board of The Trust's operations;
- 3.1.3. to ensure compliance with health care standards binding on the Trust, and
- 3.1.4. for effective financial decision-making, management and control.

3.2. Need for action:

NHS England believes that 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 the Licence do not continue or recur.

UNDERTAKINGS

NHS England and the Trust has agreed to the following undertakings.

4. Operational performance:

4.1 Urgent and emergency care (UEC)

4.1.1 The Trust will develop an action plan for UEC submitted to NHS England by a date to be agreed.

4.1.2 The Trust will take all reasonable steps to deliver a robust UEC action plan which considers learning from covid, winter and bank holidays to demonstrate improved outcomes and performance in ambulance handover delays, waiting times and improved flow by a date to be agreed by NHS England.

4.1.3 The Trust should engage with the System as part of developing the UEC plan and taking all reasonable steps to deliver it.

4.2 Elective care

4.2.1 The Trust will develop an action plan for electives submitted to NHS England by a date to be agreed.

4.2.2 The Trust will take all reasonable steps to deliver a robust action plan which supports the elimination of 104 weeks and 78 weeks, reduces the 52 week wait backlog and returns activity to above pre-covid levels by a date to be agreed with NHS England .

4.3 Cancer

- 4.3.1 The Trust will develop an action plan for cancer submitted to NHS England by a date to be agreed.
- 4.3.2 The Trust will take all reasonable steps to deliver a robust action plan to ensure 62 day waits are reduced and eradication of 104 day waits.
- 4.4 The Trust should ensure that in delivering the above (paragraphs 4.1 -4.3) that there is no impact on quality.

5. Finance Performance

5.1 The Trust will take all reasonable steps to:

- 5.1.1 develop and implement a robust financial recovery plan with associated identified efficiencies by a date to be agreed with NHS England.
- 5.1.2 demonstrate compliance with and delivery of the key metrics of this plan for at least two consecutive quarters;
- 5.1.3 demonstrate compliance to minimise the revenue cash support requirement and gain agreement for such additional funding;
- 5.1.4 demonstrate compliance to recurrently reduce and improve the I&E deficit run rate;
- 5.1.5 demonstrate compliance to complete a full assessment on the impact of efficiency savings;
- 5.1.6 demonstrate compliance in ensuring that the system longer term plan and Trust long term plan align to each other;
- 5.1.7 demonstrate compliance in ensuring the embedding of robust governance arrangements;
- 5.1.8 demonstrate compliance with the terms of funding conditions and spending approvals; and
- 5.1.9 demonstrate compliance in the development and embedding of a board development programme with a self-assessment of progress completed.

6. Development and delivery of financial recovery plan

- 6.1. The Trust will take all reasonable steps to recover the financial performance to meet national standards in relation to the governance and processes in strategic oversight.
- 6.2. The Trust will keep the plan and delivery under review and provide appropriate assurance to its Board regarding progress towards meeting the requirements of paragraph 6.1, such assurance to be provided to NHS England on request. Where matters are identified which materially affect The Trust 's ability to meet the



requirements of paragraph 2.1, whether identified by The Trust or another party, The Trust will notify NHS England as soon as practicable and update and resubmit the performance plan within a timeframe to be agreed with NHS England.

7. **General**

7.1. The Trust will:

7.1.1. Evidence all reasonable steps have been taken to meet the Recovery Support Programme Exit Criteria as set out and agreed by the System Improvement Board, in accordance with the timescales agreed by the System Improvement Board.

7.1.2. Carry out a review of progress against the Recovery Support Programme Exit Criteria and report to the System Improvement Board, in accordance with the timescales agreed by the System Improvement Board.

7.2. In line with the System Improvement Board Terms of Reference and the requirements of the System Oversight Framework segmentation, The Trust will cooperate fully with NHS England, health sector stakeholders and any external agencies or individuals appointed to work with or support The Trust to address the concerns which these undertakings seek to address.

8. **Funding conditions and spending approval**

8.1. 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.

8.2. The Trust will comply with any reporting requests made by NHS England in relation to any financing to be provided to The Trust by the Secretary of State for Health pursuant to schedule 5 to the NHS Act 2006.

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

9. **Programme Management**

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

9.2. Such programme management and governance arrangements must enable the board to:

9.2.1. obtain clear oversight over the process in delivering these undertakings.

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

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

10. Access

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

11. Meetings and reports

11.1. The Trust will attend meetings or, if NHS England stipulates, conference calls, at such times and places, and with such attendees, as may be required.

11.2. The Trust will provide such reports in relation to the matters covered by these undertakings as NHS England may require.

Any failure to comply with the above undertakings may result in the NHS England taking further formal action. This could include giving directions to The Trust under section 27B of the National Health Service Act 2006.

THE TRUST



(Chair or Chief Executive of Trust)

27/12/22

NHS ENGLAND



Oliver Newbould

(Director of Strategic Transformation (Central Midlands) and member of the Midlands Regional Support Group)

28/12/22