

ENFORCEMENT UNDERTAKINGS

Licensee:

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, 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 England accepted enforcement undertakings from The Licensee on 28 December 2022 in relation to the Operational performance (A&E), financial performance and governance.

It is noted that significant improvements have now been made in relation to operational performance (A&E, cancer and elective), despite the ongoing pressure and challenges. As a result, it is proposed that these undertakings should now be removed as compliant (recognising the ongoing pressure and risk).

The financial issues which led to undertakings, have not yet been resolved. The financial challenges continue, with the Licensee remaining in RSP for finance. As a result, it is proposed the financial undertakings are to be refreshed but continue, until such time as the Trust exits the RSP, where this will then be reconsidered. The aim is to exit the RSP no sooner than Q2 2023/24, with evidence of two months delivery of the financial plan. Should this happen prior to the annual review of these undertakings, there may need to be an earlier consideration as these align, but whilst the undertakings and RSP plan are related- they are not interdependent.

NHS England is now taking further regulatory action in the form of these undertakings which replace and supersede the December 2022 undertakings.

Sections 6 to 10 will remain to ensure robust oversight is in place for the financial undertakings.

DEFINITIONS:

In this document:

"the conditions of the Licence" means the conditions of the licence held by providers of NHS services including the Trust in this case, under Chapter 3 of Part 3 of the Health and Social Care Act 2012.

"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.

FOUNDATIONS:

1. The Licensee:

1.1 The Licensee is the holder of a licence granted under section 87 of the 2012 Act.

2. Breaches and need for action

2.1. NHS England has reasonable grounds to suspect that The Licensee 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 NHS2(5) (a) and (d) (previously referred to as FT4(5)(a) and (d) under the old Provider Licence). In particular, having regard to the matters set out in the sections below.

2.2. Financial issues

2.2.1 The Licensee continues to report a deficit against plan for 2023/24.

2.2.2 The Licensee has demonstrated progress in the areas of board governance and financial governance including the submission of accounts, but ongoing monitoring around this is needed to ensure sustainable improvement.

3. Failures and need for action

Whilst there has been some improvement and development as a result of the support and work from being in the regional support programme, there are ongoing challenges that remain. There is also a need to ensure that the changes in governance arrangements remain embedded and sustained during the time whilst the financial plan remains at risk.

3.1. There is a requirement to ensure:

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

3.2. Need for action:

NHS England believes that action which The Licensee has undertaken to take pursuant to these undertakings, is action required to secure that the previous

governance failures to comply with the relevant requirements of the conditions of the Licence do not recur.

UNDERTAKINGS FOR 2023/24

4. Finance Performance

4.1 The Licensee will take all reasonable steps to:

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

5. Development and delivery of financial recovery plan

- 5.1. The Licensee will take all reasonable steps to recover the financial performance to meet national standards in relation to the governance and processes in strategic oversight.
- 5.2. The Licensee 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 Licensee's ability to meet the requirements of paragraph 2.1, whether identified by The Licensee or another

party, The Licensee will notify NHS England as soon as practicable and update and resubmit the performance plan within a timeframe to be agreed with NHS England.

6. General

6.1. The Licensee will:

6.1.1. 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.

6.1.2. 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.

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

7. Funding conditions and spending approval

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

7.2. 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 schedule 5 to the NHS Act 2006.

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

8. Programme Management

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

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

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

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

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

9. **Access**

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

10. **Meetings and reports**

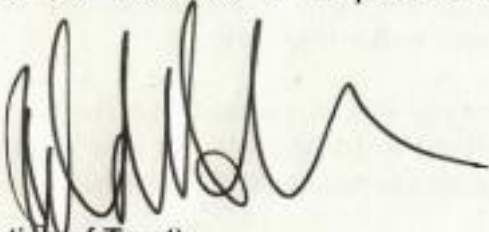
10.1. The Licensee will attend meetings or, if NHS England stipulates, conference calls, at such times and places, and with such attendees, as may be required.

10.2. The Licensee 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 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 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.

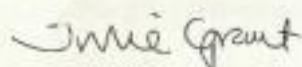
THE LICENSEE


(Chair or Chief Executive of Trust)

Date:

24/7/23

NHS ENGLAND



Julie Grant

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

Date: 18/07/23