



ENFORCEMENT UNDERTAKINGS

LICENSEE:

The Dudley Group NHS Foundation Trust
Russell's Hall Hospital
Pensnett Road
Dudley
West Midlands
DY1 2HQ

DECISION

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

GROUND

1. Licence

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

2. Issues and need for action

NHS England and NHS Improvement 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: FT4(4)(a), (b) and (c); FT4(5)(a), (b), (c), (e) and (f); FT4(6)(a), (b), (c), (d), (e) and (f).

In particular:

Quality and Governance

2.1 The Licensee underwent a series of inspections by the CQC between January 2019 and February 2019, which resulted in the issue of varied conditions contained within a section 31 notice letter. These inspections demonstrated that the Licensee has been unable to completely mitigate, or address all of the key concerns identified by the CQC. The Licensee was rated by the CQC overall as: 'Requires Improvement'. However, Urgent and Emergency Care was rated as 'Inadequate' in the safe domain; and Diagnostic Imaging was additionally rated inadequate at service level, being rated Inadequate in both the safe and well led domains.

2.2 The CQC issued a section 31 letter on 19 July 2019, and included the following concerns:

- 2.2.1 The lack of an effective system in place to assess all patients clinically in a robust way who present, within 15 minutes of their arrival. The recent implementation of the electronic patient record (EPR) system has resulted in a significant decline in triage performance. Triage performance has not yet improved in all areas to the levels recorded before EPR implementation.
 - 2.2.2 The lack of an effective system in place to identify, escalate and manage patients who may present with sepsis or a deteriorating medical condition in line with the relevant national clinical guidelines. Completion of all components of the sepsis 6 pathway has not shown consistent or sustained improvement since the condition has been applied to the trust's registration. Not all patients received sepsis treatment in a timely manner.
 - 2.2.3 The lack of sufficient numbers of suitably qualified, skilled and experienced registered nurses at all times within the Emergency Department and immediate medical assessment unit to meet the needs of patients.
- 2.3 The CQC inspection report 2019 rated Diagnostic Imaging as inadequate as a result of the following:
- a. People were not safe or at high risk of avoidable harm.
 - b. People were at risk of not receiving effective care or treatment. There was risk of lack of consistency in the effectiveness of the care, treatment and support that people received.
 - c. There were times when people did not feel well supported or cared for and their dignity was not maintained. The service was not always caring.
 - d. Services did not always meet people's needs.
 - e. The delivery of high quality care was not assured by the leadership, governance or culture.

Financial issues

- 2.4 The Licensee has reported a 2018/19 draft year-end deficit, before Provider Sustainability Fund (PSF) of £8.786m, which is £7.982m worse than planned. The year-end variance to plan is due to continued operational challenges which has led to the Licensee operating at full capacity. The Licensee has been unable to reduce its expenditure run rate, particularly around agency. The 2018/19 financial performance is an improvement on the 2017/18 outturn deficit of £10.493m.
- 2.5 The Licensee has submitted a control total compliant financial plan for 2019/20 which will deliver a deficit of £2.831m pre-PSF and excluding the surplus from the sale of land. It should be noted that at the time of submission, the Licensee also submitted a letter indicating the challenge of meeting the control total. The Licensee remains in enhanced financial oversight led by the NHS England and NHS Improvement sub-regional finance team.
- 2.6 The Licensee has raised concerns regarding the impact of the Dudley MCP on its financial position and future sustainability.

Operational performance

- 2.7. An urgent care system improvement plan has been developed and ECIST support has been provided, however there are ongoing challenges to deliver against the 4-hour emergency care standard and the improvement trajectory.
- 2.8 Although ambulance handover delays have recently improved, there remain challenges at times of urgent care pressures.
- 2.9 The Trust has been challenged in relation to the cancer 62 day cancer standard since September 2019. Actual performance in November 2019 against the 85% standard was 71.5%.

Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19
87.5%	84.1%	82.8%	85.3%	86.2%	83.1%	73.1%	71.5%

- 2.10 Performance against the diagnostics standard of 1% has deteriorated month on month since August 2019. Actual performance in December 2019 was 7.6%.

Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19
0.9%	1.2%	0.9%	0.8%	0.6%	1.5%	2.3%	5.3%	7.6%

3. Failures and need for action

3.1. Need for action:

NHS England and NHS Improvement believes that the action which the Licensee has undertaken to take pursuant to these undertakings, is action required to secure that the governance failures 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 England and NHS Improvement has taken into account the matters set out in its Enforcement Guidance.

UNDERTAKINGS

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

5. Quality Improvement Plan

- 5.1 The Licensee will take all reasonable steps to address the concerns identified in, but not limited to, the CQC Reports, including carrying out the actions set out in the CQC Report in accordance with timescales as determined by the CQC such that, upon re-inspection by the CQC within 12 months of the date of the CQC Report (or such other date as CQC may determine), the Licensee will no longer be found to be 'inadequate' in any of the CQC domains in relation to Urgent and Emergency Care and Diagnostic Imaging.

- 5.2 The Licensee will develop a comprehensive Quality Improvement Plan submitted to NHS England and NHS Improvement by 28 February 2020 (QIP) including demonstrating that it has sufficient capacity at both executive and other levels of management to enable delivery of the QIP. The QIP should also include actions from the mortality and whistleblowing independent reviews.
- 5.3 The Licensee will consult with relevant stakeholders during the delivery of the QIP, including NHS England and NHS Improvement and CQC. Consultation will take place via the Dudley System Resilience meeting. The Licensee will modify the QIP if instructed by NHS England and NHS Improvement.
- 5.4 The Licensee will keep the QIP and its delivery under review. Where matters are identified which materially affect the Licensee's ability to deliver the QIP, whether identified by the Licensee or another party, the Licensee will notify NHS England and NHS Improvement as soon as practicable and update and resubmit the QIP within a timeframe to be agreed by NHS England and NHS Improvement.
- 5.5 The Licensee will ensure that the delivery of the QIP and other measures to improve quality and operational performance do not compromise its overall financial position. The Licensee will keep the financial cost of its quality improvements under close review and will notify NHS England and NHS Improvement as soon as practicable of any matters which are identified as potentially having a material impact on the Licensee's overall financial position.
- 5.6 The Licensee will arrange with NHS England and NHS Improvement and with local partners a series of clinical visits to the Emergency Department and Diagnostic Imaging Department and any associated areas each quarter to review and assess progress against the implementation of the QIP. The scope and the review team is to be agreed by NHS England and NHS Improvement.

6. Finance

- 6.1 The Licensee will ensure that robust financial plans are in place to:
 - 6.1.1 deliver the 2019/20 control total and planned CIPs; and
 - 6.1.2 minimise the revenue cash support requirement.
- 6.2 The Licensee will take all reasonable steps to ensure that 2019/20 CIP plan, as set out in plans submitted to NHS England and NHS Improvement in May 2019, are fully delivered with full assessment being completed on the impact of schemes on quality and the Licensee's underlying financial position.
- 6.3 The Licensee will comply with planning guidance issued by NHS England and NHS Improvement in January 2019 and June 2019 related to receipt of the financial recovery fund in 2019/20. The Licensee will have in place financial recovery plans as part of the five-year system level strategic plans by December 2019. These plans will demonstrate recurrent financial improvement as measured by I&E run-rate and planned financial outturn, and which return the Licensee to sustainable financial balance.

- 6.4. The Licensee will develop a long-term financial model (LTFM) to achieve a sustainable financial position that aligns with the Black Country and West Birmingham Sustainability and Transformation Plan (the STP); the Licensee's strategic direction and the STP strategic and financial context. The Licensee will work constructively with STP partners to develop a long-term plan in line with guidance issued by NHS England and NHS Improvement in June 2019. The Licensee will agree the long-term plan with system leads and partners and publish the plan in December 2019.

Governance

- 6.5 The Licensee should ensure that appropriate governance arrangements are in place to deliver both the submitted 2019/20 plan and the medium-term financial strategy. These structures will be reviewed and approved by the NHS England and NHS Improvement regional team.

7. Operational Performance

- 7.1 The Licensee will take all reasonable steps to recover operational performance to meet national standards in relation to the 4 hour Urgent and Emergency care standard, ambulance handover delays, cancer 62 day standard and the diagnostics 6 week wait standard, including but not limited to those set out in paragraphs 7.2 to 7.4, below.
- 7.2 The Licensee will ensure that there are robust improvement plans in place to meet the requirements of paragraph 7.1, which has been agreed with NHS England and NHS Improvement.
- 7.3 The improvement plans will, in particular:
- 7.3.1 include the actions required to meet the requirements of paragraph 7.1, with appropriate timescales, key performance indicators and resourcing;
 - 7.3.2 describe the key risks to meeting the requirements of paragraph 7.1 and mitigating actions being taken;
 - 7.3.3 be based on realistic assumptions;
 - 7.3.4 reflect collaborative working with key system partners and other stakeholders;
 - 7.3.5 set out the key performance indicators which the Licensee will use to measure progress.
- 7.4 The Licensee will keep the improvement plans and their delivery under review and provide appropriate assurance to its Board regarding progress towards meeting the requirements of paragraph 7.1, such assurance to be provided to NHS England and NHS Improvement on request. Where matters are identified which materially affect the Licensee's ability to meet the requirements of paragraph 7.1, whether identified by the Licensee or another party, the Licensee will notify NHS England and NHS Improvement as soon as practicable and update and resubmit the performance plan within a timeframe to be agreed with NHS England and NHS Improvement.

8. Programme management

- 8.1 The Licensee will develop and implement or where appropriate, strengthen, Licensee-wide governance and programme management processes to manage and deliver sustained performance covered by these enforcement undertakings. Such programme management and governance arrangements must enable the board to:

- 8.1.1 obtain clear oversight over the process in delivering these undertakings;
 - 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.
- 8.2 In the event that successful delivery of the financial and operational improvement plans do not result in corresponding sustained improvements, the Licensee will consult with NHS England and NHS Improvement and other stakeholders on alternative course of actions.
9. Access
 - 9.1 The Licensee will provide to NHS England and NHS Improvement direct access to its advisors, programme leads and the Licensee's board members as needed in relation to the matters covered by these undertakings.
10. Meetings and reports
 - 10.1 The Licensee will:
 - 10.1.1 attend meetings or, if NHS England and NHS Improvement stipulates, conference calls, at such times and places, and with such attendees, as may be required by NHS England and NHS Improvement; and
 - 10.1.2 provide such reports in relation to the matters covered by these undertakings as NHS Improvement may require.

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 England and 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 England and NHS Improvement is satisfied that the Licensee has given inaccurate, misleading or incomplete information in relation to the undertakings: (i) NHS England and NHS Improvement may treat the Licensee as having failed to comply with the undertakings; and (ii) if NHS England and NHS Improvement decides so to treat the Licensee, NHS England and NHS Improvement must by notice revoke any compliance certificate given to the Licensee in respect of compliance with the relevant undertakings.

LICENSEE

Signed

D. Ware

[Chair] or [Chief Executive] of Licensee

Dated:

06/02/2020

NHS ENGLAND and NHS IMPROVEMENT

Signed

[Handwritten Signature]

Member of the Regional Provider Support Group (Midlands)

Dated:

11/2/2020

