

ENFORCEMENT UNDERTAKINGS

LICENSEE:

The Queen Elizabeth Hospital, King's Lynn NHS Foundation Trust
Foundation Trust Office
Gayton Road
King's Lynn
Norfolk
PE30 4ET

DECISION

NHS England and Improvement accepted undertakings under section 106 of the Health and Social Care Act 2012 ("The Act") from the Licensee on 14 January 2019, having reasonable grounds to suspect that the Licensee was providing health care services for the purposes of the NHS in breach of the conditions of its licence as set out in the undertakings.

A compliance certificate has been issued for paragraphs 2.1 to 2.6 of the 2019 undertakings to confirm the Licensee's compliance.

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, NHS England and Improvement has decided to accept from the Licensee the enforcement undertakings specified below pursuant to its powers under section 106 of the Act. The undertakings set out in here replace and supersede the previous remaining undertakings and introduce new undertakings in relation to a medium-term financial strategy.

In this document, "NHS England and Improvement" means Monitor.

GROUNDINGS

1. Licence

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

2. Breaches

2.1. 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), FT4(5)(a), (c), (d) (f) and FT4(6)

2.2. In particular:

Quality and Governance

2.2.1. The Licensee underwent a comprehensive CQC inspection in September 2018 and was rated as 'inadequate' overall. CQC carried out a further inspection and published a report on 24 July 2019. The Licensee's rating continues to be 'inadequate' overall. The Licensee was rated 'inadequate' for

2.2.6. The Licensee delivered to its financial plan for 2019/20 and 2020/21 in addition to delivering the planned efficiency programmes for both years. During 2020/21, the Licensee has completed detailed analysis of its underlying deficit and calculated a forecast underlying deficit as at 31 March 2021 of £39.9m excluding Provider Sustainability Funding (PSF), Financial Recovery Funding (FRF) and Marginal Rate Emergency Tariff funding (MRET) and £16.2m including PSF and FRF.

Financial Governance

2.2.5. Since the 2020 inspection, the Trust has continued to demonstrate improvements. Following the review of evidence submitted in by the Trust in January and April 2021, CQC agreed to remove 15 of the 22 Section 31 conditions from the Trust's certificate of registration.

2.2.4. The unannounced CQC inspection led to the removal of 15 section 31 conditions and 5 section 29A warning notices. However, this inspection was not sufficiently broad to enable a change in the overall rating of the Trust (which remains inadequate) to be considered, as the CQC does not rate at Trust level in a focused inspection. The CQC rated urgent and emergency care, medicine, surgery, end of life care, maternity and diagnostic imaging services as requires improvement, confirming an improved rating for urgent and emergency care, medicine, end of life care and diagnostic imaging.

2.2.3. The CQC then undertook an unannounced focused inspection of six core services (which had been rated either inadequate or requires improvement at the last inspection in July 2019) on 13 to 23 September 2020. The CQC inspected urgent and emergency care, medicine, surgery, maternity, end of life care and diagnostic imaging. As this was a focused inspection, the CQC did not inspect all key questions and focused on safe and well led. The CQC also gathered evidence to review caring in urgent and emergency care and medicine as these services had previously been rated as requires improvement.

2.2.2. The main areas of concern identified were within maternity, culture, leadership, governance, records keeping, WHO surgical checklist, infection prevention and control, management of risks, staffing, requirements for fit and proper persons, mandatory training and staffing levels. The Licensee was issued with 75 must-do and 34 should-do actions; and five requirement notices and six enforcement actions (section 29a and section 31 Warning Notices) to address safety in maternity services, urgent and emergency gynaecology, medicine, diagnostic and screening procedures. CQC recommended that the Licensee should remain in Special Measures for Quality.

the 'Safe', 'Effective' and 'Well-led' domains. 'Responsive' was rated as 'requires improvement' and 'Caring' deteriorated from 'good' to 'requires improvement'.



- 2.2.7. Previous financial arrangements were suspended for 2020/21 because of the covid-19 pandemic and the temporary financial framework will continue throughout H1 2021/22. However, there remain significant concerns regarding the Licensee's underlying financial position should normal financial arrangements resume in H2 of 2021/22.

Operational Performance

- 2.2.8. The Licensee continues to breach the accident and emergency services ("A&E") 4-hour wait target. The Licensee has improving performance relative to other Trusts in the region with respect to the A&E 4h target between 2019/20 and 2020/21 but remains below the average in the EoE region for performance between April 2020 and March 2021 (7th/10 Trusts).
- 2.3. The breaches by the Licensee described in 2.2 above demonstrate a failure of governance arrangements in particular but not limited to a failure by the Licensee to establish and effectively implement systems and or/processes (i) to ensure compliance with its duty to operate efficiently, economically and effectively and (ii) to ensure compliance with health care standards binding on the Licensee including but not restricted to standards specified by the Secretary of State, the Care Quality Commission ("CQC"), the NHS Commissioning Board and statutory regulators of health care professions.
3. Need for action
- 3.1 NHS England and Improvement believes that the action, which the Licensee has undertaken to take pursuant to these undertakings, is action to secure that the breaches in question do not continue or recur.
4. Appropriateness of Undertaking
- 4.1 In considering the appropriateness of accepting in this case the undertakings set out below, NHS England and Improvement has taken into account the matters set out in its Enforcement Guidance.

UNDERTAKINGS

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

1. Quality Improvement Plan

- 1.1. The Licensee will take all reasonable steps to address the concerns identified in, but not limited to, the CQC Report dated 24 July 2019 and the CQC Report dated 16 December 2020, including carrying out the actions set out in these reports in accordance with timescales as determined by the CQC.

1.2. The Licensee will demonstrate that it is able to deliver its 2021/22 Integrated Quality Improvement Plan (IQIP), implemented since the December 2020 CQC inspection, including demonstrating that it has sufficient capacity and capability at both executive and other levels of management to enable delivery of the IQIP. The Licensee will ensure it has in place clear board governance processes which support delivery of the IQIP and that any impact of the IQIP on operational and financial performance are clearly considered at all stages of decision making.

1.3. The Licensee will consult with relevant stakeholders during the delivery of the IQIP, including NHS England and Improvement and CQC. Consultation will take place via the single system oversight and assurance group, led by NHS England and improvement, established to provide system support to the Licensee in the delivery of the IQIP. The Licensee will work with its partners in the N&W ICS to develop and deliver its IQIP. The Licensee will modify the IQIP if instructed by NHS England and Improvement.

1.4. The Licensee will keep the IQIP and its delivery under review. Where matters are identified which materially affect the Licensee's ability to deliver the IQIP, whether identified by the Licensee or another party, the Licensee will notify NHS Improvement as soon as practicable and update and resubmit the IQIP within a timeframe to be agreed by NHS England and Improvement.

1.5. The Licensee will ensure that the delivery of the IQIP 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 Improvement as soon as practicable of any matters which are identified as potentially having a material impact on the Licensee's overall financial position.

1.6. The Licensee will arrange with NHS England and Improvement and with local partners a series of clinical visits each quarter to review and assess progress against the implementation of the IQIP. The scope and the review team will be agreed by NHS England and Improvement.

2. Urgent and emergency care

2.1. The Licensee will work with its partners in the Norfolk and Waveney ICS (N&W ICS) to develop an Urgent and Emergency Care Improvement Plan to be agreed with NHS England and Improvement by 30 June 2021.

2.2. The plan will specify actions that will be completed by the Licensee and its partners in the N&W ICS to deliver sustainable improvements in operational performance for urgent and emergency care services including the Licensee's performance in relation to 2021/22 planning guidance priorities.

3. Financial governance

3.1. The Licensee will work with its partners in the N&W ICS to prepare a financial strategy

and medium term financial improvement plan that is aligned to the clinical, workforce, IT, estates and other relevant Licensee strategies, and is aligned to wider system plans. This will need to include an updated analysis of deficit drivers, set out how the Licensee will eliminate the non-structural deficit and be supported by an action plan to address the improvements identified in the use of resources report (dated 13 September 2018). This plan should be agreed with NHS England and Improvement by Q3 2021/22, the timing recognising that the guidance on the financial framework applicable for H2 2021/22 onwards will not be available until the middle of the year and will be a key input to this plan.

- 3.2. This financial strategy should have an objective and aim to resolve issues identified in the use of resources report, in the context of a post Covid-19 environment.
- 3.3. The Licensee will allow access to documents, meetings and key members of staff as requested to enable NHS England and NHS Improvement to undertake a financial governance review, the scope and date of which will be determined by NHS England and NHS Improvement in discussion with the Licensee.

4. Funding conditions and spending approvals

- 4.1. Where interim support financing or planned term support financing is provided by the Secretary of State for Health to the Licensee pursuant to section 40 of the NHS Act 2006, the Licensee will comply with any terms and conditions which is attached to the financing.
- 4.2. The Licensee will comply with any reporting requests made by NHS England and Improvement in relation to any financing to be provided to the Licensee by the Secretary of State for Health pursuant to section 40 of the NHS Act 2006.
- 4.3. Where the Licensee receives payments from the Financial Recovery Fund or Top- Up Funding, the Licensee will comply with any terms or conditions which is attached to the payments.
- 4.4. The Licensee will comply with any spending approvals processes that are deemed necessary by NHS England and NHS Improvement.

5. Improvement Director

- 5.1. The Licensee will co-operate and work with an Improvement Director(s) who may be appointed by NHS England and Improvement to oversee and provide independent assurance to NHS England and Improvement on the Licensee's delivery of the QIP and improvement of quality of care the Trust provides.

6. Board Effectiveness and governance

- 6.1. The Licensee will take all reasonable steps to deliver the quality, operational performance and finance improvement plans referred to above in sections 1 to 3 above and will ensure that the delivery of these plans is overseen and assured by the

Licensee's Board and through appropriate system governance to be agreed with NHS England and Improvement when the plans are agreed. The Licensee will work with NHS England and Improvement to agree what additional support is required to support the delivery of the improvement plans including but not limited to intensive support teams, regional and national programmes, clinical networks and the cancer alliances.

6.2. The Licensee will take all reasonable steps to address the governance concerns identified in the CQC Report.

7. Programme Management

7.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these undertakings. Such arrangements must enable the Board to:

7.1.1. obtain a clear oversight of the progress in delivering these undertakings;

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

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

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

8. Meetings and reports

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

8.2. The Licensee will provide such reports in relation to the matters covered by these undertakings as NHS England and 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 Improvement. This could include the imposition of discretionary requirements under section 105 of the Act in respect of 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 Improvement is satisfied that the Licensee has given inaccurate, misleading or incomplete information in relation to the undertakings:



- (i) NHS England and Improvement may treat the Licensee as having failed to comply with the undertakings; and
- (ii) if NHS England and Improvement decides so to treat the Licensee, NHS England and Improvement must by notice revoke any compliance certificate given to the Licensee in respect of compliance with the relevant undertakings.

LICENSEE

Signed

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(Chair or Chief Executive of Licensee) Dated:

NHS ENGLAND AND IMPROVEMENT

Signed

**[Regional Medical Director] and member of the Regional Support Group
(East of England)**

Dated:

