

ENFORCEMENT UNDERTAKINGS

NHS TRUST:

University Hospitals of Derby and Burton NHS Foundation Trust ("the Licensee")
Royal Derby Hospital
Uttoxeter Road
Derby
DE22 3NE

DECISION:

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

BACKGROUND

NHS Improvement accepted enforcement undertakings from the Licensee on 4 September 2014 in relation to financial issues and operational performance.

On 12 March 2019 NHS Improvement issued a compliance certificates in respect of the 2014 undertakings.

Although the Licensee has made progress since the undertakings were agreed in September 2014, NHS Improvement has concerns about the Licensee's operational performance in relation to sustained performance against the 62-day cancer treatment target.

NHS Improvement is now taking regulatory action in the form of accepting these undertakings.

The undertakings in this document relate to financial performance and performance against the 62-day cancer target and also replace and supersede the 2014 undertakings in relation to those undertakings where a certificate of compliance has not been issued. 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 / or updated.

FOUNDATIONS:

1. Licence

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

BREACHES:

2. Issues and need for action

- 2.1. NHS Improvement 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: FT4(5)(a) to (c), (f) and (g).

2.2. In particular:

Operational performance: At Quarter 4 2018/19, the Licensee had breached the cancer 62-day standard ("the cancer standard") and has failed to deliver the cancer standard in any month since April 2018. The Licensee has an improvement plan but has failed to deliver some of the key elements of the plan against the expected timelines, which has resulted in failure to meet its recovery trajectory. The Licensee has failed to address its cancer performance sustainably over this period and has not delivered its recovery trajectory in 2018/19.

Financial Performance: For 2018/19 the Licensee agreed a revised control total of £37.4m deficit. The Licensee reported a final 2018/19 financial position of a £69.1m deficit; this provides an adverse variance to control total of £31.7m (excluding PSF).

2.3 These failings by the Licensee demonstrate a failure of governance arrangements including, in particular, failure to establish and effectively implement systems or processes:

- (a) to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
- (b) for timely and effective scrutiny and oversight by the Board of the Licensee's operations;
- (c) to ensure compliance with healthcare standards binding on the Licensee.

2.4 Need for action:

NHS Improvement believes that the action, which the Licensee has undertaken to take pursuant to these undertakings, is action required to ensure that the failures to comply with the relevant requirements of the conditions of the Licence do not continue or recur.

3. Appropriateness of Undertaking

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.

UNDERTAKINGS

NHS Improvement has agreed to accept, and the Licensee has agreed to give, the following undertakings, pursuant to s. 106 of the Act.

1. Operational Performance (Cancer)

- 1.1. The Licensee will take all reasonable steps to recover operational performance to meet national standards, including but not limited to those set out in paragraphs 1.2 to 1.8, below.
- 1.2. The Licensee will produce and submit to NHS Improvement an updated cancer 62-day plan ("the Cancer Plan") to achieve compliance with the cancer standard on a sustainable basis. The updated Cancer Plan will be submitted to NHS Improvement by a date to be agreed with NHS Improvement.
- 1.3. The Licensee will work with NHS Improvement's Intensive Support team ("the IST") to provide assistance in making recommendations for improvement and incorporating these into the Cancer Plan to be submitted to NHS Improvement.

- 1.4. The Cancer Plan will include, in particular:
 - 1.4.1. A narrative of the current drivers of performance below the cancer standard;
 - 1.4.2. The Licensee's planned actions to improve cancer performance. The actions will include realistic assumptions, key performance indicators against each action, resourcing and expected impact on overall cancer performance; and
 - 1.4.3. The Licensee's updated trajectory to deliver the cancer standard.
- 1.5. The Licensee will ensure that the Cancer Plan is endorsed by the STP Leadership Board.
- 1.6. The Licensee will implement all the actions in the Cancer Plan within timescales set out in the Cancer Plan, unless otherwise agreed by NHS Improvement.
- 1.7. The Licensee will take all other reasonable steps to deliver compliance with the cancer standard on a sustainable basis within a timeline to be agreed with NHS Improvement.
- 1.8. The Licensee will report to NHS Improvement on the implementation of the updated Cancer Plan each month or an alternative frequency if required by NHS Improvement.
- 1.9. The Licensee will keep the Cancer Plan and its delivery under review and provide appropriate assurance to its Board regarding progress towards meeting the requirements of paragraph 1.1.

2. Financial Performance

- 2.1. For the 2019/20, 2020/21 and 2021/22 financial years the Licensee will develop its annual financial plans in line with national planning guidelines and timeframes. In so doing the Licensee will ensure:
 - 2.1.1. its annual financial plans demonstrate year-on-year financial improvement (on both a reported and underlying/recurrent basis);
 - 2.1.2. its annual financial plans fully reflect opportunities for operational and financial efficiency identified in the Model Hospital;
 - 2.1.3. it works with the Licensee's lead commissioner to minimise any alignment differences on activity and efficiency plans;
 - 2.1.4. its annual financial plans are robust, quality assured and agreed by the Licensee's Board; and
 - 2.1.5. it takes all reasonable steps to ensure it is able to deliver its annual financial plans, including regular assessments of whether it has sufficient financial capability and capacity to deliver.
- 2.2. In addition, the Licensee will develop a high-level long-term deficit reduction financial improvement plan and financial strategy ("the long-term plan") covering the financial years from 2019/20 to 2028/29. This will be submitted to NHS Improvement by autumn 2019 as specified in the recently issued planning guidance in relation to the five-year plan. In so doing the Licensee will ensure the long-term plan:
 - 2.2.1. materially reduces or eradicates the Licensee's deficit;
 - 2.2.2. is financially consistent with the annual financial plan submitted to NHS Improvement for 2019/20;
 - 2.2.3. reflects the opportunities for operational and financial efficiency identified in the Model Hospital and includes plans for returning loss making services to at least a breakeven operating position or for an agreed alternative delivery solution;
 - 2.2.4. is aligned with commissioner activity and efficiency plans;
 - 2.2.5. includes a summary of key assumptions made; and
 - 2.2.6. is quality assured and agreed by the Licensee's Board.

2.3. The Licensee's progress in delivering the long-term plan will be regularly reported to its Board and to NHS Improvement.

2.4. The long-term plan will be periodically updated, as and when required.

3. Distressed Finance and Spending Approvals

3.1. 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, the Licensee will comply with any terms and conditions which attached to the financing.

3.2. Where the Licensee receives payments from the Provider Sustainability Fund the Licensee will comply with any terms and conditions which attach to the payments.

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

4. Programme management

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

4.2. Such programme management and governance arrangements must enable the Board to:

4.2.1. obtain clear oversight over the process in delivering these undertakings;

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

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

5. Meetings and reports

5.1. The Licensee will 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.

5.2. The Licensee will 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 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 Improvement is satisfied that the Licensee has given inaccurate, misleading or incomplete information in relation to the undertakings: (i) NHS Improvement may treat the Licensee as having failed to comply with the undertakings; and (ii) if NHS Improvement decides so to treat the Licensee, NHS

Improvement must by notice revoke any compliance certificate given to the Licensee in respect of compliance with the relevant undertakings.

THE TRUST

Signed



Gavin Boyle

Chief Executive, University Hospitals of Derby and Burton NHS Foundation Trust

Dated: 9.10.19

NHS IMPROVEMENT

Signed



Fran Steele

Director of Strategic Transformation, North Midlands Locality

Member of the Midlands Regional Provider Support Group

Dated:

17.10.19