

ENFORCEMENT UNDERTAKINGS

LICENSEE

Gloucestershire Hospitals NHS Foundation Trust ("the Licensee")
Cheltenham General Hospital
Sandford Road
Gloucestershire
GL53 7AN

REFERENCES

Any reference to 'NHS Improvement' in these undertakings is to be taken as a reference to Monitor.

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 under powers under section 106 of the Health and Social Care Act 2012 ("the Act").

GROUND

1. Licence

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

2. BACKGROUND

- 2.1. In July 2016 the Licensee commissioned a review of its financial position which subsequently highlighted significant deficiencies in financial forecasting and control. In September 2016 the Licensee reported a forecast financial deficit for 2016/17 of £26.6m and an interim cash support requirement of £46.9m, compared with an annual plan, approved by the Trust Board in April 2016, to deliver an £18.6m surplus.
- 2.2. On 17 October 2016, NHS Improvement gave notice that it intended to place the Licensee in Financial Special Measures. Financial Special Measures is a package of measures applied to particular NHS bodies as part of a reset of expectations of financial discipline and performance in the NHS. Financial Special Measures is designed to help NHS bodies facing the biggest financial challenges.

3. BREACHES

3.1. In light of its forecast financial deficit, 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: CoS (3) and 7(1) and (2); FT4(4)(a) and (c); FT4(5)(a), (d), (e) and (g).

3.2. In particular:

- 3.2.1. in forecasting an unplanned financial deficit of £29.8m for 2016/17 and requiring associated interim support from the Department of Health of around £47m to secure continuity of services, the Licensee: failed to adopt and apply systems and standards of corporate governance and of financial management which might reasonably be regarded as suitable for a provider of Commissioner Requested services (CoS3)(1)); failed to act in a manner calculated to secure access to the required resources (CoS7(1)); and undertook activity which created a material risk that required resources would not be available (CoS7(2));
- 3.2.2. the Licensee's failed to establish and implement (i) effective board and committee structures to assure the board of the effectiveness or otherwise of its system of internal financial control and the robustness of financial assumptions underpinning the 2016/17 annual plan (FT 4(4)(a)), and (ii) clear reporting lines and accountabilities concerning its underlying financial position (FT4(4)(c)); and
- 3.2.3. the Licensee's failure to establish and effectively implement systems and processes:
 - 3.2.3.1. to ensure compliance with the licensee's duty to operate efficiently, economically and effectively, as evidenced by the unplanned deficit of £29.8m and failure to identify and deliver efficiencies in line with the Licensee's 2016/17 Cost Improvement Programme approved by the Board as part of the 2016/17 annual plan (FT4(5)(a));
 - 3.2.3.2. for effective financial decision-making, management and control, as evidence by the Licensee's failure to take appropriate action to mitigate the impact of the forecast financial deficit timeously and by weaknesses identified in the August 2016 Financial Reporting external review (FT4(5)(d));
 - 3.2.3.3. to obtain and disseminate accurate, comprehensive, timely information to support Board and Committee decision making, as evidenced by the Licensee's failure to appraise the Board of the underlying financial position (FT4(5)(e)); and
 - 3.2.3.4. (g) to monitor business plans, as evidenced by the Licensee's 2016/17 annual plan to deliver an £18.6m financial surplus, proposed to and agreed by its board in April 2016 (FT4(5)(g)).

3.3. Need for action

NHS 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 undertakings

In considering the appropriateness of accepting 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 section 106 of the Act:

1. Financial Special Measures

Governance

- 1.1 Within the timescales specified by NHS Improvement, the Licensee will:
 - 1.1.1 publish a statement on its website homepage explaining that the Licensee has been placed in Financial Special Measures and the reasons for this (taking into account the explanation provided by NHS Improvement). The statement will include a link to the Financial Improvement Notice issued to the Licensee by NHS Improvement; and
 - 1.1.2 notify its council of governors that the Licensee has been placed in Financial Special Measures, the reasons for it and the planned response.

Financial Recovery Plan

- 1.2 As soon as reasonably practicable after receiving the Financial Improvement Notice, the Licensee will identify and set out in writing the key financial issues, including an analysis of the underlying causes of the Licensee's financial position, that need to be addressed to ensure the Licensee's financial recovery ('Diagnostic').
- 1.3 Taking into account the findings of the Diagnostic, the Licensee will develop a Financial Special Measures Recovery Plan ('FSMRP'). The scope and detailed content of the FSMRP will be as agreed with NHS Improvement but will include:
 - 1.3.1 actions to address the key issues identified by Diagnostic with key milestones;
 - 1.3.2 a robust recovery plan, quality-assured and agreed by the Licensee's board that will deliver rapid financial recovery and achieve a quarter on quarter improvement in the Licensee's I&E and cash run rates during 2016/17 and Quarter 4 I&E and cash run rates to deliver a materially better financial result for 2017/18 than the 2016/17 recovery plan;
 - 1.3.3 actions to deliver the Licensee's Agency Action Plan and the planned cost reductions in line with the timescales set out in this plan;
 - 1.3.4 actions to develop and submit to NHS Improvement a refreshed Cost Improvement Programme for 2016/17, as soon as practicable. This should identify and secure delivery of all practicable recovery actions to improve and stabilise the 2016/17 financial position;
 - 1.3.5 the plan for implementation of all actions designed to strengthen financial control. This should include implementation of the recommendations made in the August 2016 Financial Reporting Review in line with the timescales set out in the Licensee's associated action plan. It should also include any further actions to strengthen financial control identified by the Licensee, NHS Improvement, or external reviewers commissioned to support

development or delivery of the FSMRP through work undertaken while the Licensee is in Financial Special Measures;

- 1.3.6 actions to embed and monitor the additional controls and other measures the Licensee has put in place since being put into Financial Special Measures to strengthen financial control. These may relate, for example, to staff pay costs, procurement, cash, delegated financial limits and programme management offices (PMOs.); and
 - 1.3.7 details of how the Licensee will deploy sufficient resources to ensure implementation of the FSMRP.
- 1.4 When developing the FSMRP, the Licensee will engage effectively with key stakeholders, including commissioners, and will reflect their views appropriately.
 - 1.5 The Diagnostic and the FSMRP will be delivered to NHS Improvement at least 2 working days in advance of the Progress Review Check (defined at 3.2 below). The Diagnostic and FSMRP are subject to review and approval by NHS Improvement.
 - 1.6 The Licensee will take all reasonable steps to secure that it is able to deliver the FSMRP once it has been agreed by NHS Improvement.

Financial Control

- 1.7 The Licensee will comply with any arrangements specified by NHS Improvement for the approval of the Licensee's decisions on expenditure.

The Licensee will not make any application for financial assistance provided by the Secretary of State under section 40 of the National Health Service Act 2006 unless that application has been approved by NHS Improvement.

2. Further requirements

Financial governance

- 2.1 The Licensee will take all practical steps to implement and maintain robust financial governance arrangements, including but not limited to those set out in paragraphs 2.2 to 2.5 below.
- 2.2 The Licensee will take all practical steps to facilitate and support completion of the financial governance review, the scope for which was agreed by the Licensee Board on 30 September 2016 ('the financial governance review') in response to the factors contributing to the Licensee's financial deterioration.
- 2.3 The Licensee will develop a detailed action plan ('the financial governance action plan') to address the issues and recommendations arising from the financial governance review, and where appropriate any actions arising from further work undertaken by the Licensee or NHS Improvement to strengthen financial governance. The Licensee will agree this action plan with NHS Improvement, to a timescale to be agreed with NHS Improvement.
- 2.4 The Licensee will deliver the financial governance action plan within the timescales set out in the plan.
- 2.5 The Licensee will embed improved financial control and forecasting processes to support effective scrutiny and oversight of the financial position by the Board, Finance Committee and Audit Committee, including full-year I&E and cash forecasts, risks to delivery and mitigations, working capital movements and debtor/creditor performance, and distressed finance utilisation.

Medium-term financial recovery plan

- 2.6 The Licensee will take all reasonable steps to return to financial sustainability, including but not limited to those set out in paragraphs 2.7 to 2.9 below.
- 2.7 The Licensee will submit to NHS Improvement its two-year operational plan in line with the national planning timetable for 2017/18 and 2018/19 ('the two-year plan'). The two-year plan must demonstrate planned recovery of the Licensee's financial position through quarter on quarter improvements in I&E and cash run rates to support delivery of sustainable financial balance.
- 2.8 The Licensee will take all practical steps to facilitate and support completion of the Cost Improvement Programme and financial baselining external reviews. The Licensee will develop and deliver detailed action plans to respond to the findings of the Cost Improvement Programme and financial baselining external reviews to support development of a comprehensive cost improvement programme for 2017/18 and 2018/19. Wherever practicable and appropriate, the two-year plan and financial assumptions that are included should be aligned to and consistent with the Licensee's strategic, quality and operational priorities and those of the Gloucestershire Sustainability & Transformation Plan (STP).
- 2.9 The Licensee should keep the two-year plan under review and provide appropriate assurance to its Board that the Plan is sufficient to secure recovery of the Licensee's financial position. Any amendments required to the Plan to ensure it remains appropriate should be raised and agreed with NHS Improvement in a timely manner.

Capacity and capability

- 2.10 The Licensee will implement sufficient programme management and governance arrangements to enable delivery of the plans and to meet all other commitments in these undertakings. Such programme management and governance arrangements will enable the Board to:
- 2.10.1 obtain a clear oversight over the progress in delivery of the plans and in meeting all other commitments in these undertakings;
 - 2.10.2 obtain an understanding of any risks to the successful achievement of the plans and to meeting all other commitments in these undertakings and ensure appropriate mitigation of any such risks; and
 - 2.10.3 Hold individuals to account for the delivery of the relevant plans and for meeting all other commitments in these undertakings.
- 2.11 The Licensee will conduct a capacity and capability review of its finance team, the scope of which is to be agreed with NHS Improvement, to a timescale to be agreed by NHS Improvement. This review should include assessing and strengthening financial planning processes, guidance and training for all relevant staff to support delivery of the two-year operational plan for 2017/18 and 2018/19. The Licensee will submit an action plan to NHS Improvement setting out how it will address the findings of this review to a timescale to be agreed with NHS Improvement.
- 2.12 The Licensee will conduct a skills assessment of its Board and provide a summary of the key issues and actions it will take in response to NHS Improvement. The scope and timescales for this review must be agreed with NHS Improvement.
- 2.13 The Licensee will commission an external board governance review in line with NHS Improvement's Well-Led Framework, taking into consideration Board capacity and capability. The scope, source and timescales for this review will be agreed with NHS Improvement. The Licensee will provide copies of the draft and final reports to NHS Improvement.
- 2.14 The Licensee will implement the actions and recommendations identified in the board governance review to a timescale to be agreed with NHS Improvement, including, if required by NHS Improvement, commissioning a follow-up review to test whether actions have been implemented.

Financial Improvement Director

- 2.15 The Licensee will co-operate and work with the Financial Improvement Director or any other person appointed by NHS Improvement to oversee and provide independent assurance to NHS Improvement on the Licensee's actions to deliver its financial recovery, including the FSMRP.

3. Reporting

- 3.1 The Licensee will develop and agree with NHSI a set of key performance indicators (KPIs) which allow the Licensee to track progress against the delivery of these undertakings and the impact of actions taken on outcomes.
- 3.2 The Licensee will meet with representatives of NHS Improvement, including the Financial Improvement Director, within 1 month of receiving the Financial Improvement Notice ('Progress Review Check'). The purpose of the Progress Review Check is to consider the Diagnostic and the FSMRP and to determine

Licensee's progress in meeting the undertakings set out above.

3.3 The Licensee will attend any other meetings or, if NHS Improvement stipulates, conference calls required by NHS Improvement to monitor progress. These meetings will, unless NHS Improvement stipulates otherwise, take place at times and places to be specified by NHS Improvement and with attendees specified by NHS Improvement.

3.4 The Licensee will comply with any additional meeting, reporting or information requests made by NHS Improvement.

4. Other matters

4.1 The Licensee will provide to NHS Improvement, the Financial Improvement Director, or any other person so appointed, direct access to its advisors, its board members, and any other members of its staff considered necessary by NHS Improvement and also full access to any meetings, resources and information, as needed in relation to the matters covered by these undertakings.

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 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 MONITOR. 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 UNDERTAKING.

LICENSEE

Signed

Deborah Hart

Dated

6th December 2016

NHS Improvement

Signed

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke.

Dated

06 / 12 / 2016