

17th May 2018

Sent by email:

ENFORCEMENT UNDERTAKINGS

LICENSEE

Lancashire Teaching Hospitals NHS Foundation Trust (“the Licensee”)
Royal Preston Hospital
Sharoe Green Lane
Fulwood
Preston
PR2 9HT

BACKGROUND

On 18 June 2015, NHS Improvement accepted enforcement undertakings from the Licensee under section 106 of the Health and Social Care Act 2012 (“the Act”), having had reasonable grounds to suspect that the Licensee was providing healthcare services for the purposes of the NHS in breach of the conditions of its licence.

The Licensee has not fully complied with these enforcement undertakings. Those undertakings that remain in effect are deemed to be no longer effective as a means of securing compliance due to the passage of time and intervening events.

In place of the enforcement undertakings, NHS Improvement has decided to take further regulatory action in the form of the undertakings set out below. These undertakings supersede the undertakings agreed on 18 June 2015, which cease to have effect from the date of these undertakings.

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.

GROUND

1. Licence

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

BREACHES

2. Financial Sustainability

2.1 NHS Improvement has reasonable grounds to suspect that the Licensee has provided and is providing health care services for the purposes of the NHS in breach of the following conditions of its licence: FT4(5)(a), (d), and (f) and CoS3(1)(a) and (b).

2.2 In particular, the Licensee:

2.2.1 has reported annual deficits of £25m (2016/17) and £37.6m in 2017/18;

2.2.2 is planning a deficit of £46.4m in 2018/19;

2.2.3 has an expected requirement for distressed finance of £46m in 2018/19.

2.3 The matters set out above demonstrate a failure of governance and financial management by the Licensee, including, in particular:

2.3.1 a failure by the Licensee to adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as:

(a) suitable for a provider of the Commissioner Requested Services provided by the Licensee, and

(b) providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern;

2.3.2 a failure to establish and effectively implement systems and/or processes:

(a) to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;

(b) for effective financial decision-making, management and control (including but not restricted to appropriate systems and/or processes to ensure the Licensee's ability to continue as a going concern);and

(c) to identify and manage (including but not restricted to manage through formal plans) material risks to compliance with the conditions of its Licence;

2.4 Need for action

NHS Improvement believes that the action which the Licensee has undertaken to take pursuant to the undertaking recorded here is action to secure that the breaches in question do not continue or recur.

3 Appropriateness of Undertakings

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

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

1 Finance

- 1.1 The Licensee will take all reasonable steps to improve its financial position and minimise its external funding requirement. The Licensee will take all reasonable steps to deliver its services on a financially sustainable basis, including but not limited to the actions outlined below:
 - 1.1.1 The Licensee will, by 31st May 2018 appoint a Turnaround Director to help identify and execute opportunities not currently being delivered. The post holder will be agreed with NHS Improvement in advance of starting the role and will report to NHSI Improvement on a weekly basis. The Licensee will ensure that relevant clauses and review periods are built into the contract of employment.
 - 1.1.2 The Licensee will, as a minimum, deliver a deficit of no more than the planned deficit of £46.441m as set out in the Licensee's 2018/19 Operating Plan, unless agreed with NHS Improvement.
 - 1.1.3 The Licensee will by 31 July 2018, submit a Board approved diagnostic ("the Financial Diagnostic") identifying the causes of the Licensee's financial performance.
 - 1.1.4 The Licensee will develop a short-term financial plan ("the Financial Plan"), based on the findings of the Financial Diagnostic that delivers any savings opportunities in 2018/19 identified as appropriate and agreed with NHS Improvement.
 - 1.1.5 The Licensee will agree the Financial Plan with NHS Improvement by 31st October 2018.
 - 1.1.6 The Licensee will actively engage with other stakeholders in the local health economy (Greater Preston Clinical Commissioning Group, Chorley and South Ribble Clinical Commissioning Group and Lancashire County Council) to develop a sustainability plan (the "Sustainability Plan") which is consistent with STP plans.
 - 1.1.7 Once the Sustainability Plan has been agreed with NHS Improvement, the Licensee will take all reasonable measures within its control to implement the actions of the Sustainability Plan, within timescales to be agreed with NHS Improvement.
 - 1.1.8 Where matters are identified which materially affect the Licensee's ability to meet the agreed requirements of the Financial Plan and/or the Sustainability Plan, whether identified by the Licensee, NHS Improvement or another party, the Licensee will notify NHS Improvement (if NHS Improvement is not aware of the matter) as soon as practicable, and update and resubmit the Financial Plan and/or Sustainability Plan within a timeframe to be agreed with NHS Improvement.

- 1.1.9 The Licensee will implement sufficient programme management and governance arrangements to enable delivery of the actions in the Financial Plan and Sustainability Plan.

2 Funding conditions and spending approvals

- 2.1 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 attach to the financing.
- 2.2 The Licensee will comply with any reporting requests made by NHS 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.
- 2.3 Where the Licensee receives payments from the Sustainability and Transformation Fund, the Licensee will comply with any terms or conditions which attach to the payments.
- 2.4 The Licensee will comply with any spending approvals processes that are deemed necessary by NHS Improvement.

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.

LICENSEE



Signed (Chair or Chief Executive of Licensee)

Dated:

29/5/2018

hinda Beekley

NHS IMPROVEMENT

Signed (Delivery and Improvement Director, Greater Manchester and Lancashire)

Dated 17th May 2018