

ENFORCEMENT UNDERTAKINGS

LICENSEE:

Pennine Care NHS Foundation Trust

225 Old Street

Ashton-under-Lyne

Lancashire

OL6 7SR

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. Finance and Quality

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: CoS 3(1)(b) and FT4(5)(a),(c),(d),(f) and (g).

2.2. In particular:

2.2.1. The Licensee is forecasting a £6.6m deficit in 2017/18 representing a £9.8m variance from the Control Total agreed in December 2016 in part driven by unrealised commissioner commitments and part by insufficient expenditure

control exercised by the Trust,. It is likely that the Licensee will require distress funding in 2018/19.

- 2.2.2. The Licensee has failed to establish a recovery plan that demonstrates how and when it will return to financial balance.
- 2.2.3. Based on the Licensee's current financial projections it will require distress finance for an indefinite period beyond 2018/19. The Licensee has therefore not yet demonstrated that it is sustainable in its current form.
- 2.2.4. The Licensee has been given an overall CQC rating of 'Requires Improvement' due to concerns in relation to the governance of serious incidents, reporting of Serious Untoward Incidents and safeguarding.
- 2.2.5. Whilst it is recognised progress has been made more recently, the Licensee has not responded at sufficient pace to the concerns raised by CQC. In particular the Licensee failed to address specific concerns raised in CQC's December 2016 report as evidenced by the further inspection in June 2017. These included providing sufficient workforce structure and capability to deliver good governance of safe care.

2.3. These breaches by the Licensee demonstrate a failure to:

- 2.3.1. adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern, in particular, in providing mitigation against expected income not materialising during contract negotiations.
- 2.3.2. establish and implement systems and 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, in particular, in relation to working with commissioners to take the necessary action to ensure the development of a service offer within the overall available resource envelope (c) to identify and manage material risks to compliance with the Conditions of its Licence (d) to generate and monitor delivery of business plans and to receive internal and where appropriate external assurance on such plans and their delivery (e) 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, the NHS Commissioning Board and statutory regulators of health care professions.

2.4. 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.

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

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

1. Strategy

- 1.1. By 31 March 2018, the Licensee will develop a clear policy on investment appraisal, ensuring that any potential future tenders or retenders are scrutinised for strategic fit and economic viability.
- 1.2. By 31 March 2019, in collaboration with their commissioners, the Licensee will complete a comprehensive review of its services to determine whether they are sustainable in their current form and, if not, determine next steps (including potential divestment or transformation). This co-produced review will reflect the Licensee's refreshed Quality and Business Strategy, to be led by the Licensee's CEO. The Licensee will develop a plan for the completion of this review by 31 March 2018, to be agreed with NHS Improvement, which will include quarterly checkpoints on progress.
- 1.3. Following the review, the Licensee will, to a timescale to be agreed with NHS Improvement, review its operating model and assess whether its structure, capacity and capability are sufficient to implement the actions that are required.

2. Finance

- 2.1. By January 2018, the Licensee will provide NHS Improvement with its revised financial forecast for 2017/18 and a draft forecast for 2018/19. By the end of February 2018, the Licensee will provide NHS Improvement with a Board quality assured financial plan for 2018/19 ahead of a final detailed plan submission at the end of March 2018 (or in line with national timescales if different).
- 2.2. By the end of March 2018, aligned to the Licensee's operating plan, the Licensee will develop a high level medium to long term financial recovery plan covering the following 3 to 5 years, demonstrating how it can return to financial sustainability, and the period over which this will be achieved.
- 2.3. The Licensee will, over such period as NHS Improvement may determine, demonstrate that it is capable of implementing the financial recovery.

- 2.4. Where any matters are identified which materially affect the Licensee's ability to meet the requirements of the financial recovery plan, whether or not identified by the Licensee, the Licensee will notify NHS Improvement as soon as reasonably practicable and resubmit a revised plan within a timeframe to be agreed with NHS Improvement.

3. Operational Performance

- 3.3. The Licensee will continue to implement its CQC action plan, ensuring that its oversight and assurance is robust.
- 3.4. By the end of February 2018, the Licensee will identify the workforce and associated governance structures required to effectively and safely manage the concerns identified by the CQC relating to safeguarding, management of serious untoward incidents, and same sex accommodation. In particular the Licensee will undertake a review of its quality governance arrangements as part of a well led review and identified any improvements necessary. The Licensee will also develop a recruitment and retention plan to support any improvements identified.
- 3.5. By the end of June 2018 the Licensee will develop a Quality Improvement Programme Plan, led by the new CEO, to include organisational development and leadership, culture and values. This plan will be developed in collaboration with key stakeholders within the local health and social care system.

4. Funding conditions and spending approvals

- 4.3. 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.
- 4.4. The Licensee will comply with any reporting requests made by NHS Improvement in relation to any financing provided or to be provided to the Licensee by the Secretary of State for Health pursuant to section 40 of the NHS Act 2006.
- 4.5. 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.
- 4.6. The Licensee will comply with any spending approvals processes that are deemed necessary by NHS Improvement.

5. Reporting

- 5.3. The Licensee will provide regular reports to NHS Improvement on its progress in meeting these undertakings and will attend any meetings, or, if NHS Improvement stipulates, conference calls, that NHS Improvement may require. These meetings will take place once a month unless NHS Improvement otherwise stipulates, at a

time and place to be specified by NHS Improvement and with attendees specified by NHS Improvement.

- 5.4. The Licensee will on request provide NHS Improvement with details of any assurances on which the Board has relied in relation to the Licensee's progress in delivering these undertakings.
- 5.5. The Licensee will comply with any additional reporting or information requests made 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

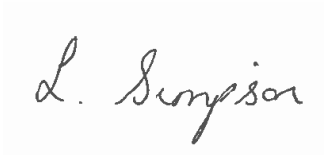
A handwritten signature in black ink that reads "Claire Mollay". The signature is written in a cursive, flowing style.

(Chair or Chief Executive of Licensee)

Dated: 4th January 2018

NHS IMPROVEMENT

Signed

A handwritten signature in black ink, reading "L. Simpson", is centered within a light gray rectangular box.

Lyn Simpson
Chair of the Regional Provider Support Group (North)

Dated: 4th January 2018