

ENFORCEMENT UNDERTAKINGS

LICENSEE:

York Teaching Hospital NHS Foundation Trust
The York Hospital
Wigginton Road
York
YO31 8HE

PROPOSAL

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, NHS Improvement proposes 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 governance

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(5)(a),(b),(d), and (e).

2.2. In particular:

2.2.1. The Licensee's Board failed to identify the financial deterioration in 2017/18 in a timely way as it was not focused on run rate;

2.2.2. The Licensee was not able to evidence adequate governance arrangements were in place to ensure delivery of its financial recovery plan; in particular there was limited discussion at Board level and no robust mechanism for holding directors to account and the quality of progress reporting was poor which hindered proper scrutiny;

2.2.3. The Licensee has not ensured that it has in place appropriate systems and processes to ensure its ability to continue as a going concern. In particular the Licensee has not ensured that its savings programmes are sufficiently transformational and as a result is likely to have significant further

opportunities for delivering financial and clinical sustainability through delivering services in a fundamentally different way; and

2.2.4. The Licensee's Board has not had timely and effective scrutiny and oversight of the Licensee's strategy or its engagement with the wider health and social care system, resulting in limited focus on these areas.

2.3. These breaches by the Licensee demonstrate a failure of the Licensee's financial management, in particular but not limited to failures to establish and effectively implement systems or processes to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively.

2.4. Need for action

NHS Improvement believes that the action, which the Licensee proposes to undertake to take pursuant to these undertakings, is action to secure that the breaches in question 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.

PROPOSED UNDERTAKINGS

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

1. Board and financial governance

1.1. The Licensee will, by a date to be agreed with NHS Improvement, develop an action plan ("the Plan") which will include timeframes and responsible leads agreed by NHS Improvement, to address the issues set out in paragraph 2.2 above;

1.2. The Licensee will take all reasonable steps to substantially implement the Plan, by a date to be agreed with NHS Improvement.

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. The Licensee will comply with any terms and conditions which attach to payments made from the Provider Sustainability Fund.
 - 2.4. The Licensee will comply with any spending approvals processes that are deemed necessary by NHS Improvement.
3. Programme management
- 3.1. The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these undertakings;
 - 3.2. Such programme management and governance arrangements must enable the Board to:
 - 3.2.1 obtain clear oversight over the process in delivering these undertakings;
 - 3.2.2 obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and
 - 3.2.3 hold individuals to account for the delivery of the undertakings.
4. Meetings and reports
- 4.1. The Licensee will provide reports as required by NHS Improvement, and 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.

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



Patrick Crowley, Chief Executive

Signed (Chair or Chief Executive of

Licensee) Dated: 30th April 2018

NHS IMPROVEMENT



Warren Brown, Delivery and Improvement Director

Signed

Member of the Regional Provider Support Group (North Region) (Note: undertakings can be accepted/signed by a DID where the RSG pass a resolution enabling the individual member to act for the Group pursuant to the RSG terms of reference)

Dated: 30/4/18.