

## ENFORCEMENT UNDERTAKINGS

### LICENSEE:

University Hospitals Morecambe Bay NHS Foundation Trust (“the Licensee”)  
Trust Headquarters  
Westmorland General Hospital  
Burton Road  
Kendal  
LA9 7RG

### 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) and (d) and CoS3(1)(a) and (b).

2.2 In particular, the Licensee:

2.2.1 has reported annual deficits of £40m (2015/16) and £27m in 2016/17 (excluding STF);

2.2.2 has an annual plan for deficits of £62.8m in 2017/18 and £69.3m in 2018/19;

2.2.3 has negative net assets and an expected requirement for borrowing £47m via Department of Health working capital facility in 2017/18.

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; and
  - (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)

### 3 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.

### 4 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, as a minimum, deliver a deficit of no more than deficit of £69.449m as set out in the Licensee's 2018/19 Operating Plan, unless agreed with NHS Improvement.
  - 1.1.2 The Licensee will by 31 July 2018, present to NHSI, via a face to face meeting, a summary of the Board approved diagnostic already undertaken and provide an update on the development of the financial plan referred to in paragraph 1.1.3.
  - 1.1.3 The Licensee will actively engage with the local health economy (Morecambe Bay Clinical Commissioning Group, Cumbria County Council and Lancashire County Council) and with Lancashire and South Cumbria STP to refresh and further develop the existing five year recovery plan for sustainability (the "Sustainability Plan") and ensure that it is consistent with STP plans.

- 1.1.4 The Licensee will finalise and approve through its Board, the Sustainability Plan by no later than 31<sup>st</sup> October 2018.
- 1.1.5 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 Sustainability Plan within a timeframe to be agreed with NHS Improvement.
- 1.1.6 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.

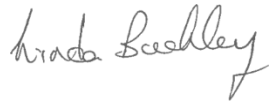
Where NHS Improvement is satisfied that the Licensee has given inaccurate, misleading or incomplete information in relation to the undertakings: (i) NHS Improvement may treat the Licensee as having failed to comply with the undertakings; and (ii) if NHS Improvement decides so to treat the Licensee, NHS Improvement must by notice revoke any compliance certificate given to the Licensee in respect of compliance with the relevant undertakings.

**LICENSEE**

A handwritten signature in black ink, consisting of a large 'L' followed by a stylized 'J' and a long horizontal stroke.

**Signed (Chair or Chief Executive of Licensee)**

**Dated: 30<sup>th</sup> May 2018**

A handwritten signature in black ink, appearing to read 'Mark Bebbey'.

**NHS IMPROVEMENT**

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

**Dated: 8<sup>th</sup> May 2018**