

Enforcement Undertakings

NHS Trust:

Brighton and Sussex University Hospitals NHS Trust ("the Trust")
Barry Building,
Eastern Rd,
Brighton
BN2 5BE

DECISION:

On the basis of the grounds set out below and pursuant to the powers exercisable by NHS Improvement under or by virtue of the National Health Service Act 2006 and the TDA Directions, NHS Improvement has decided to accept undertakings from the Trust.

DEFINITIONS:

In this document:

"the Conditions of the Licence" means the conditions of the licence issued by Monitor under Chapter 3 of Part 3 of the Health and Social Care Act 2012 in respect of which NHS Improvement has deemed it appropriate for NHS trusts to comply with equivalent conditions, pursuant to paragraph 6(c) of the TDA Directions;

"NHS Improvement" means the National Health Service Trust Development Authority (the "TDA");

"TDA Directions" means the National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016.

BACKGROUND

NHS Improvement accepted undertakings from the Trust on 22 March 2017 having reasonable grounds to suspect the Trust was providing health care services for the purposes of the NHS while failing to comply with Conditions of the Licence as set out in the undertakings.

A compliance certificate has been issued for paragraphs 1.1, 2, 3 and 4 of the undertakings. The remaining undertakings, i.e. the undertakings for which no compliance certificate has been issued, are deemed to be no longer effective as a means of securing compliance with the Conditions of the Licence due to the passage of time and intervening events.

In place of the remaining undertakings, NHS Improvement is now taking further regulatory action in the form of these undertakings. These undertakings replace and supersede the undertakings accepted on 22 March 2017, which cease to have effect from the date of these undertakings.

GROUNDS

1. The Trust

The Trust is an NHS trust all or most of whose hospitals, facilities and establishment are situated in England.

2. Issues and need for action

2.1. NHS Improvement has reasonable grounds to suspect that the Trust has provided and is providing healthcare services for the purposes of the NHS while failing to comply with the following Conditions of the Licence: FT4(5)(a) to (f).

2.2. In particular:

Financial issues

2.2.1. NHS Improvement placed the Trust into Financial Special Measures (FSM) and concluded the Trust was in breach of its licence for financial reasons in October 2016. This was as a result of a significant deterioration in the Trust's 2016/17 financial position and related deficiencies in the Trust's financial reporting and system of internal financial control. The Trust failed to deliver its revised 2016/17 plan largely due a shortfall in contract income and ended the year with a £72.1m deficit (excluding Sustainability & Transformation Funding (STF)).

2.2.2. In 2018/19, the Trust was removed from special measures for financial reasons and it delivered a £65.3m deficit (excluding Provider Sustainability Funding - PSF) in line with the Control Total set by NHS Improvement. The reported position includes PSF of £14.4m. The trust delivered efficiencies of £30.2m, £0.2m above its target of £30m.

2.2.3. The trust has accepted its 2019/20 Control Total of £25.7m deficit including PSF of £24.5m however, there are concerns relating to its income plan for specialist services. Efficiency target is set at £27.1m, 4.5% of planned expenditure. Agency plan of £11.7m is in line with the designated ceiling.

2.2.4. In light of the scale of the Trust's underlying financial position and the 3Ts programme, there is clearly considerable risk to achieving financial sustainability going forward. It is therefore critical that the Trust has a robust and stretching medium term financial recovery plan in place.

Performance issues

2.2.5. In the financial year 2018/19, the Trust failed to deliver against the agreed trajectories for A&E waiting times, RTT, Cancer and Diagnostics. It delivered against the agreed trajectories for Emergency Department only for the first 4 months of the year. In particular:

(a) Emergency Department: the Trust reported 160 12 hour trolley waits in January and February 2019;

(b) Emergency Department: performance against the 4 hour standard was significantly below trajectory (76.78% versus a trajectory of 88% in February 2019)

(c) Diagnostics: the Trust has reported a deteriorating position against the 1% standard since September 2018, and reported 25.4% in January 2019, making the Trust one of the worst performing nationally;

(d) RTT: performance against the incomplete standard was circa 77% versus a trajectory of 83.5% - the waiting list has increased by 10,000 when compared to March 2018 and in March 2019 the Trust was reporting 52 week waits, having eliminated them in July 2018;

(e) Cancer: performance against the 62 day standard was 65.7% versus a trajectory of 85% in December 2018.

2.3. The issues which resulted in the imposition of special measures for financial reasons demonstrated a failure of governance arrangements including, in particular, failure to effectively implement systems and processes:

- to ensure compliance with the Trust's duty to operate efficiently, economically and effectively;
- for timely and effective scrutiny and oversight by the Board of the Trust's operations;
- to ensure compliance with healthcare standards binding on the Trust;
- for effective financial decision making, management and control; and
- for identifying and managing (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of the Licence.

The Trust has taken effective action to address its governance failures since the undertakings of March 2017, but further improvements are required. In addition, the performance issues outlined above demonstrate that further work is required to effectively implement the systems and processes outlined above in so far as they relate to operational performance.

2.4. Need for action

2.4.1. NHS Improvement believes that the actions, which the Trust has undertaken to take pursuant to these undertakings, is action required to secure that the failures to comply with the relevant requirements of the Conditions of the Licence do not continue or recur.

UNDERTAKINGS

NHS Improvement has agreed to accept, and the Trust has agreed to give the following undertakings:

1. Finance

1.1. The Trust will take all reasonable steps to reduce the Trust's current deficit and return to financial sustainability by a date to be agreed with NHS Improvement.

1.2. In meeting the requirements of paragraph 1.1 the Trust will, by a date to be agreed with NHS Improvement, develop and submit a medium term financial recovery plan and trajectory ("MTFRP"), to be agreed by the Trust Board and by NHS Improvement and demonstrate that it can deliver that plan.

1.3. The Trust will ensure that the MTFRP will:

- 1.3.1. address underlying drivers of the Trust's deficit, to a scope and timescale to be agreed with NHS Improvement;
- 1.3.2. incorporate demand and capacity planning analysis; and
- 1.3.3. be aligned with local commissioner and Sustainability and Transformation Plans.

2. Performance

2.1. The Trust will, by a date to be agreed with NHS Improvement, develop and finalise a Performance Plan, including trajectories ("the Performance Plan") to be agreed by the Trust Board and by NHS Improvement.

2.2. The Trust will demonstrate, by a date specified by NHS Improvement, that it has to that date taken the necessary steps to implement the Performance Plan and is able to deliver the plan.

2.3. The Trust will take all reasonable steps to improve performance and return to compliance with the national waiting times standards for A&E, RTT, Diagnostics and Cancer, in accordance with the trajectories and timetables agreed in the Performance Plan.

3. Programme management

3.1. The Trust will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.

3.2. Such programme management and governance arrangements will enable the Trust's 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. Access

4.1. The Trust will provide to NHS Improvement direct access to its advisors, programme leads and the Trust's board members as needed in relation to the matters covered by these undertakings.

5. Meetings and reports

5.1. The Trust will attend the Integrated Assurance Meetings and provide information for each such meeting, in accordance with the arrangements agreed between the Trust and NHS Improvement following the March 2017 undertakings.

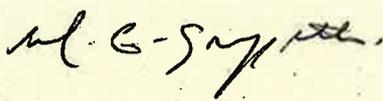
5.2. If NHS Improvement considers further meetings or reports necessary in the light of a significant change of circumstances (for example, if there is a significant risk that these undertakings will not be complied with, or a new performance issue), the Trust will:

5.2.1. attend further meetings or, if NHS Improvement stipulates, conference calls, at such times and places, and with such attendees as NHS Improvement requires; and

5.2.2. provide such reports in relation to the matters covered by these undertakings as NHS Improvement may require.

Any failure to comply with the above undertakings may result in NHS Improvement taking further formal action. This could include giving directions to the Trust under section 8 of the National Health Service Act 2006 and paragraph 6 of the TDA Directions.

THE TRUST



Signed (Chair or Chief Executive of the Trust)

Dated: 25.08.19

NHS Improvement



Signed ([Chair] [Member] of the Regional Support Group (South East))

Dated 25.08.19