

ENFORCEMENT UNDERTAKINGS

LICENSEE:

East Kent Hospitals University NHS Foundation Licensee
Kent and Canterbury Hospital
Ethelbert Road
Canterbury
Kent
CT1 3NG

REFERENCES:

Any reference to "NHS Improvement" in these undertaking is to be taken as a reference to Monitor.

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 the powers exercisable by NHS Improvement under section 106 of the Health and Social Care Act 2012 ("the Act").

GROUNDINGS:

1. Licensee

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

2. Breaches

2.1. In light of its significant financial deficit, 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 the licence: FT4(5)(a), (d) and (f).

2.2. In particular:

2.2.1. The Licensee's finances have shown material deterioration against the financial plan for 2016/17 to a Month 10 full year deficit of £27 million (excluding sustainability transformation funding) ("STF") in 2016/17.

2.2.2. The Licensee has not delivered the £5 million improvement in forecast outturn that was expected following the meeting with NHS Improvement in September 2016 and the current forecast is a considerable adverse variance against the original control total of £15.5million deficit (excluding STF).

2.2.3. On 9 March 2017 NHS Improvement gave notice that it intended to place the Licensee in Financial Special Measures from 6 March 2017. Financial Special Measures is a package of measures applied to particular NHS bodies as part

of a reset of expectations of financial discipline and performance in the NHS. Financial Special Measures is designed to help NHS bodies facing the biggest financial challenges.

2.3. These failures by the Licensee demonstrate a failure of governance arrangements, in particular but not limited to a failure by the Licensee to establish and effectively implement systems and/or processes:

2.3.1.1. to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;

2.3.1.2. 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

2.3.1.3. to generate and monitor delivery of business plans (including any changes to such plans) and to receive internal and where appropriate external assurance on plans and their delivery.

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

NHS Improvement has agreed to accept and the Licensee has agreed to give the following undertakings.

1. Financial Special Measures recovery plan

- 1.1. The Licensee will, by a date to be agreed with NHS Improvement, prepare and submit to NHS Improvement a detailed Financial Special Measures recovery plan ("FSMRP") which:
 - 1.1.1. takes into account the diagnostic document submitted outlining the causes of the Licensee's financial position; and
 - 1.1.2. outlines how the Licensee will better its 2017/18 control total (excluding STP) and return to surplus within two years and before year end FY 2018/19 (excluding STP), given the current forecast exit position and run rate for 2016/17. prepare
- 1.2. The scope and detailed content of the FSMRP will be as agreed with NHS Improvement, but will include:
 - 1.2.1. actions to address the key issues identified, including a high level milestone plan for delivery of the Licensee's key schemes to deliver the FSMRP;
 - 1.2.2. the monthly phasing of and assurance on delivery of the FY 2017/18 Cost Improvement Programme (including the Licensee's internal assurance approach);
 - 1.2.3. a credible trajectory to a surplus position within 2 years;
 - 1.2.4. details of extra controls and other measures the Licensee has already put in place since being put into Financial Special Measures to immediately strengthen financial control, which may relate, for example, to staff pay costs, procurement, cash, delegated financial limits and programme management offices; and
 - 1.2.5. details of how the Licensee will deploy sufficient resources to ensure implementation of the FSMRP.
- 1.3. The FSMRP must be robust, quality-assured and agreed by the Licensee's board.
- 1.4. When developing the FSMRP, the Licensee will engage effectively with key stakeholders, including commissioners, and will reflect their views appropriately in the FSMRP.
- 1.5. The Diagnostic and FSMRP are subject to review and approval by NHS Improvement.
- 1.6. The Licensee will take all reasonable steps to secure that it is able to deliver the FSMRP once approved by NHS Improvement.

2. FRP delivery

2.1. The Licensee will demonstrate to NHS Improvement a period of successful implementation of the FRP and assurance of continued focus, capability and capacity to sustainably maintain financial recovery and deliver the FSMRP.

3. Financial Improvement Director

3.1. The Licensee will co-operate and work with a Financial Improvement Director appointed by NHS Improvement to oversee and provide independent assurance to NHS Improvement on the Licensee's actions to deliver its financial recovery, including the FSMRP.

3.2. The Licensee will provide the Financial Improvement Director and their team with full access to the Licensee's key personnel, meetings, resources and information during the Financial Special Measures period.

4. Financial Control

4.1. The Licensee will comply with any arrangements specified by NHS Improvement for the approval of the Licensee's decisions on expenditure.

4.2. The Licensee will not make any application for financial assistance provided by the Secretary of State under section 40 of the National Health Service Act 2006 unless that application has been approved by NHS Improvement.

5. Reporting

5.1. The Licensee will attend meetings or, if NHS Improvement stipulates, conference calls, during the period of Financial Special Measures to discuss its progress. These meetings will, unless NHS Improvement stipulates otherwise, take place at times and places to be specified by NHS Improvement and with attendees specified by NHS Improvement.

5.2. The Licensee will provide to NHS Improvement direct access to its advisors, its board members, and any other members of its staff considered necessary by NHS Improvement, as needed in relation to the matters covered by these undertakings.

5.3. The Licensee will comply with any additional reporting or information requests made by NHS Improvement.

The undertakings set out here are without prejudice to the undertakings dated 3 september 2014 and 25 august 2015, the additional licence condition imposed on 29 august 2014 and the requirement on the licensee to ensure that it is compliant with all the conditions of its licence, including 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 undertaking was given and/or revocation of the licence under section 89 of the act.

Where nhs improvement is satisfied that the licensee has given inaccurate, misleading or incomplete information in relation to an undertaking: (i) nhs improvement may treat the licensee as having failed to comply with the undertaking; 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 undertaking.

LICENSEE


Dated

A large, stylized handwritten signature in black ink, appearing to be a cursive name.

Signed (On behalf of the Licensee)

NHS IMPROVEMENT

Dated: Friday 2 June 2017

A handwritten signature in black ink, appearing to be 'June Egan'.

Signed (Chair of Regional Support Group - South)