

ENFORCEMENT UNDERTAKINGS

LICENSEE:

Norfolk and Norwich University Hospitals NHS Foundation Trust ("the Licensee")
Colney Lane
Norwich
NR4 7UY

DECISION

Monitor accepted undertakings under section 106 of the Health and Social Care Act 2012 ("the Act") from the Licensee on 24 April 2015 (varied on 18 November 2015) and 5 April 2016 (varied on 2 September 2016) having reasonable grounds to suspect the Licensee was providing health care services for the purposes of the NHS in breach of the conditions of its licence as set out in the undertakings.

Compliance certificates have been issued for some of the undertakings to confirm the Licensee's compliance.

The governance undertakings agreed on 24 April 2015 remain in place.

The other remaining undertakings - relating to operational performance and finance - 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. NHS Improvement is now taking regulatory action in the form of these undertakings for the reasons set out below.

These undertakings replace and supersede the operational and finance undertakings agreed on 24 April 2015 and 5 April 2016 (in each case as varied) which cease to have effect from the date of these undertakings.

In this document, "NHS Improvement" means Monitor.

FOUNDATIONS

1. Licence

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

BREACHES

2. Target Breaches

- 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); FT4(5)(b); FT4(5)(c); FT4(5)(f) and FT4(5)(g).
- 2.2. In particular:
 - 2.2.1. The Licensee continues to breach the accident and emergency services ("A&E") 4-hour wait target. The Licensee has worked with ECIST and regulators to ensure external scrutiny, assurance and best practice is taken into account.
 - 2.2.2. The Licensee continues to breach the cancer 31-day wait for second or subsequent treatment comprising surgery target and the 62-day wait for first treatment from urgent general practitioner ("GP") referral for suspected cancer target. The Licensee can demonstrate good internal processes and oversight in respect to cancer patients but it still has significant issues in respect to sustainably delivering the 31d and 62d standards above. In the last 11 months the 31d standard has delivered 5 times, most recently in February. The 62d standard has not been met in this same time period and delivery against the May recovery plan was not achieved. The Licensee has a new 62d plan and is demonstrating progress in backlog reduction against a number of tumour sites. It has a trajectory to return to delivery of the standard from July 2017. The 31d issues are month on month issues at a patient level and the Licensee is maintaining close patient level oversight.
 - 2.2.3. The Licensee continues to experience significant delivery issues in respect to achieving the RTT incomplete standard Licensee-wide and is challenged in respect to capacity to meet demand.
- 2.3. These breaches by the Licensee detailed in 2.2. above 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 (i) to ensure compliance with its duty to operate efficiently, economically and effectively and (ii) 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 ("CQC"), 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. Financial Governance Breaches

3.1. 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); FT4(5)(d); FT4(5)(f); FT4(5)(g); FT4(7); CoS3(1)(a) and CoS3(1)(b).

3.2. In particular:

3.2.1. the Licensee is forecasting a deficit of £8.879m excluding STF and a surplus of £4.406m including STF

3.2.2. the Licensee has still has further work to do to deliver its CIP target for 2017/18

3.2.3. the licensee must develop and utilise service line reporting

3.3. These breaches by the Licensee demonstrate a failure of corporate governance arrangements and financial management standards in particular, but not limited to, a failure by the Licensee to establish and effectively implement systems and/or processes:

3.3.1. for effective financial decision-making, management and control, including appropriate systems and/or processes to ensure the Licensee's ability to continue as a going concern, and

3.3.2. to identify and manage, including to manage through forward plans, material risks to compliance with the Conditions of its Licence.

3.4. Need for action

NHS Improvement believes that the action, which the Licensee has undertaken to take pursuant to these undertakings, will secure that the breaches in question do not continue or recur.

4. 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.

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. Emergency Care

NHS Improvement is the operational name for the organisation that brings together Monitor, NHS Licensee Development Authority, Patient Safety, the National Reporting and Learning System, the Advancing Change team and the Intensive Support Teams.

- 1.1. The Licensee will take all reasonable steps to deliver the A&E improvement plan as agreed with NHS Improvement in May 2017 (the "A&E Plan") and trajectory for 2017/18.

2. Cancer

- 2.1. The Licensee will take all reasonable steps to deliver the cancer improvement plan as agreed with NHS Improvement in May 2017 (the "62 day Cancer Plan") for 62 day treatment and the trajectories agreed with NHS Improvement for 2017/18.
- 2.2. The Licensee will put in place a plan and take all reasonable steps to deliver the cancer 31-day wait for second or subsequent treatment comprising surgery target.

3. RTT

- 3.1. The Licensee will take all reasonable steps to deliver the RTT 18 week incomplete standard in line with the plan dated 27 February 2017 and received by NHS Improvement (the "RTT Plan") to deliver by end of October 2018.

4. Financial Recovery

- 4.1. The Licensee will take all reasonable steps to deliver 2017/18 financial plan (Financial Plan) agreed with NHSI on 30 March 2017 in order to meet the agreed control total in 2017/18.
 - 4.1.1. The Financial Recovery Plan will include details of the development and implementation of cost improvement plans
 - 4.1.2. Actions to ensure effective contract negotiation with commissioners
 - 4.1.3. Any other issues identified by NHS Improvement as key to the delivery of the FRP
- 4.2. The Licensee will demonstrate that it is able to deliver the FRP. The Licensee will keep the delivery of the FRP under review and will amend the FRP to take into account any significant matters identified and agreed with NHS Improvement. References to the FRP these undertakings will mean the FRP as so amended
- 4.3. The Licensee will utilise and develop effective service line reporting
- 4.4. When requested by NHS Improvement the Licensee will undertake a review of the capacity and capability of the finance team.

5. DH financing and spending approvals

- 5.1. 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.

- 5.2. 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.
- 5.3. The Licensee will comply with any terms and conditions which attach to payments made from the Sustainability and Transformation Fund.
- 5.4. The Licensee will comply with any spending approvals processes that are deemed necessary by NHS Improvement.

6. Meetings and Reporting

- 6.1. The Licensee will provide regular updates to NHS Improvement on a monthly basis and in a format agreed by NHS Improvement regarding the on the ongoing development and delivery of the 17/18 CIP programme and development of 18/19 CIP programme.
- 6.2. The Licensee will meet with representatives of NHS Improvement, including the Financial Improvement Director, after Quarter 1 2017/18 ('Progress Review Check') to ensure delivery of its Financial Recovery Plan
- 6.3. The Licensee will attend meetings or, if NHS Improvement stipulates, conference calls, during the currency of the undertakings detailed in this notice to discuss its progress in meeting those undertakings. These meetings will take place once a month, unless NHS Improvement stipulates otherwise, at a time and place to be specified by NHS Improvement and with attendees specified 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 (Chair or Chief Executive of Licensee)

Dated:



8/9/17

NHS IMPROVEMENT

Signed

 7/11/17

[Chair OR Member] of the Regional Provider Support Group (*Midlands and East*)