

ENFORCEMENT UNDERTAKINGS

LICENSEE

Northern Lincolnshire and Goole NHS Foundation Trust (“the Licensee”)
Diana, Princess of Wales Hospital
Scartho Road
Grimsby
DN33 2BA

Any reference to “NHS Improvement” in these undertakings is to be taken as a reference to Monitor.

BACKGROUND

On 8 April 2015 NHS Improvement accepted enforcement undertakings from the Licensee under section 106 of the Health and Social Care Act 2012 (“the Act”), having had reasonable grounds to suspect that the Licensee was providing healthcare services for the purposes of the NHS in breach of the conditions of its licence. Due to the passage of time and intervening events, those undertakings are deemed to be no longer effective as a means of securing compliance with the conditions of its licence.

On 24 March 2017 NHS Improvement gave notice that the licensee is in Financial Special Measures. 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.

On 6 April 2017 NHS Improvement formally notified the Licensee of its entry into Quality Special Measures.

In place of the undertakings previously accepted by NHS Improvement on 8 April 2015, NHS Improvement has decided to take further regulatory action in the form of the undertakings set out below. These undertakings replace and supersede the undertakings agreed on 8 April 2015 which cease to have effect from the date of these undertakings.

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”).

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 health care services for the purposes of the NHS in breach of the following conditions of its licence: CoS3(1) and FT4(5)(a),(d) and (f).
- 2.2 In particular, at the time the Licensee was placed into Financial Special Measures:
- 2.2.1 the Licensee's 2016/17 control total had anticipated a £23.5m deficit. The Licensee subsequently estimated a deficit of £31.5m, which included the benefit of a £3.3m recovery plan. The revised forecast was therefore an adverse variance of £8m against the agreed control total;
 - 2.2.2 the Licensee has been unable to explain what is driving the deficit;
 - 2.2.3 the Licensee has failed to establish a plan to return to a clinically and financially sustainable position;
 - 2.2.4 in December 2016 the Licensee accepted a 2017/18 control total of £23.5m deficit, excluding STF. That plan included a CIP of £14.7m. The Licensee no longer believes that this control total is deliverable and has forecast a deficit of £36.6m excluding STF, a deterioration of £13.1m.
- 2.3 The Licensee was placed in Financial Special Measures on 24 March 2017 because although the Licensee agreed its control total, the Licensee had a significant negative variance against the control total plan and was forecasting a significant deficit. The Licensee meets the key criteria for consideration for financial special measures, a set out in Annex H to "Strengthening Financial Performance and Accountability in 2016/17" published on 21 July 2016.
- 2.4 The matters set out above demonstrate a failure of governance and financial management by the Licensee, including, in particular:
- 2.4.1 failure to adopt and apply systems and standards of corporate governance and of financial management which would reasonably be regarded as:
 - 2.4.1.1 suitable for a provider of the Commissioner Requested Services provided by the Licensee; and
 - 2.4.1.2 providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern; and
 - 2.4.2 failure to establish and effectively implement appropriate systems and/or processes:
 - 2.4.2.1 to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
 - 2.4.2.2 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);
 - 2.4.2.3 to identify and manage (including through forward plans), material risks to compliance with the Conditions of its Licence.

2.5 Need for action

NHS Improvement believes that the action which the Licensee proposes to undertake pursuant to these undertakings, is action required to secure that the breaches in question do not continue or recur.

3. Quality Special Measures

- 3.1 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(4)(b) and (c); FT4(5)(a)-(c) and (e)-(f); and FT4(6)(a)-(f).

3.2 In particular:

- 3.2.1 In November 2016 the Care Quality Commission (“CQC”) undertook a comprehensive inspection of the Licensee. The inspection resulted in the issuing of a warning notice by CQC on 20 January 2017 (“the warning notice”). The warning notice identified immediate concerns with the processes in place at the Licensee to ensure the service provided were consistently safe, effective and responsive to the needs of patients. The CQC published its final inspection report on 6 April 2017, which recommended that the Licensee be placed in quality special measures. In particular, CQC noted:
- 3.2.1.1 that there was insufficient management oversight and governance at Board, senior and middle management levels, of the identified risks and performance of the Licensee that resulted in reoccurrence of patient backlogs and a deteriorating overall position with regard to referral to treatment (RTT) times and patients waiting for follow up outpatient appointments and diagnostic tests in endoscopy;
 - 3.2.1.2 concerns that risks recorded on Board Assurance Framework (BAF) and a corporate risk register remained in place for prolonged periods of time even after mitigations had been put into place. There were 24 risks recorded on the BAF of which many were rated as amber. There were also concerns that the right assurances were not in place;
 - 3.2.1.3 concerns regarding the capacity and capability of the divisional management teams specifically with regard to the recognition, recording and mitigation of risks within the core services;
 - 3.2.1.4 poor leadership and oversight in a number of services, notably maternity services and urgent care. In those services leaders had not led and managed required service improvements robustly or effectively;
 - 3.2.1.5 service leads had tolerated high levels of risks to quality and safety without taking appropriate and timely action to address them;
 - 3.2.1.6 there were gaps in how outcomes and actions from audits of clinical practice were used to monitor quality in some services;
 - 3.2.1.7 there were a number of nursing and medical staffing vacancies and staff turnover in some areas was particularly high, including in medical care, emergency departments, surgical services, and services for children and young people;
 - 3.2.1.8 the Licensee had systems in place to manage staffing shortfall as well as escalation processes to maintain safe patient care. However, a number of registered nurse shifts remained unfilled despite these escalation processes and we saw examples of wards not meeting planned staffing levels and high patient acuity not identified appropriately;
 - 3.2.1.9 assessment and response to patient risk was inconsistent and did not support early identification of deterioration. This was particularly evident in the Emergency Department (ED) at Scunthorpe General Hospital (SGH), where the national early warning scores (NEWS) were not recorded in the majority of records we reviewed and in maternity services;
 - 3.2.1.10 Paediatric Early Warning Score (PEWS) was not in use in the ED at SGH and although used at DPoW, had not been consistently completed, following a review of records. CQC was not assured that the identification and escalation of deterioration in a child’s condition would be recognised;
 - 3.2.1.11 the standard of documentation was variable. For example in ED across both the Licensee’s sites CQC reviewed a total of 56 sets of patients’ records (37 adults and 19 children) and found completion of documentation was variable and at times inadequate to ensure delivery of safe care;

- 3.2.1.12poor infection prevention and control processes and standards of cleanliness in the ED at SGH. Mandatory training rates in infection control were variable;
 - 3.2.1.13in 2015, CQC had noted the Licensee must ensure there is an effective process for providing consistent feedback and learning from incidents. However, learning from incidents remained inconsistent and variable between directorates;
 - 3.2.1.14inconsistent practice with regard to resuscitation trolley checks, fridge temperature checks and medication checks;
 - 3.2.1.15the Licensee had significant access and flow issues which had not changed since the inspection in 2015. Performance with referral to treatment times and management of capacity and demand had shown either no or minimal improvement since 2015;
 - 3.2.1.16the Licensee was not meeting the 4-hour waiting time target in ED;
 - 3.2.1.17patient flow through remained an issue with a significant number of patients cared for on nonmedical or non-speciality wards;
 - 3.2.1.18patients who were moved more than once could be under the care of different consultants during their stay in hospital;
 - 3.2.1.19some management teams had insufficient understanding of performance data, ability to plan capacity to meet demands on services or credible recovery plans that would address the areas of concern;
 - 3.2.1.20the Licensee has continued to report mixed sex breaches in a number of core services. For example in medicine at Scunthorpe 14 mixed sex breaches had been reported;
 - 3.2.1.21the Licensee participated in national and local audit programmes however performance was mixed across most of the core services with many showing performance that was worse than England averages. There was also variation in patient outcomes between the two hospital sites;
 - 3.2.1.22the endoscopy unit had lost their Joint Accreditation Group (JAG) accreditation in August 2016 due to an audit that was not submitted within the necessary timescales;
 - 3.2.1.23concerns regarding the completion of the K2 training package (an interactive computer based training system that covered CTG interpretation and fetal monitoring) for midwives and medical staff in maternity; and
 - 3.2.1.24concerns about the organisational culture, including a disconnection between the executive team and staff and a sense of fear amongst some staff groups regarding repercussions of raising concerns and bullying and harassment.
- 3.3 These failures by the Licensee demonstrate a failure of governance arrangements, in particular but not limited to a failure by the Licensee to:
- 3.3.1 establish and implement;
 - 3.3.1.1 effective board and committee structures;
 - 3.3.1.2 clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees; and
 - 3.3.1.3 clear reporting lines and accountabilities throughout its organisation;
 - 3.3.2 establish and implement systems and/or processes;
 - 3.3.2.1 to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
 - 3.3.2.2 for timely and effective scrutiny and oversight by the Board of the Licensee's operations;
 - 3.3.2.3 to ensure compliance with health care standards binding on the Licensee;
 - 3.3.2.4 to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making;
 - 3.3.2.5 to identify and manage material risks to compliance with the conditions of its licence; and
 - 3.3.3 to address matters relating to quality of care specified in FT4(6).

4. Need for Action

- 4.1 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.

5. 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:

Financial Special Measures

1. Diagnostic and Financial recovery plan

- 1.1. The Licensee will procure, engage with and ensure completion of a robust diagnostic addressing the underlying causes of the Licensee's financial deficit. The scope of work required and the identity of the adviser appointed by the Licensee to carry out the work must be agreed with NHS Improvement. Whilst work undertaken by the adviser on the diagnostic will be at the Licensee's expense, the adviser will report directly to NHS Improvement upon completion of its report and will owe NHS Improvement a duty of care in that respect. The report may be used to inform NHS Improvement's future regulatory approach in relation to the Licensee. The first Financial Special Measures Progress Review Check (defined below) will, among other things, consider the results of the diagnostic.
- 1.2. Following the first Financial Special Measures Progress Review Check, the Licensee must develop a financial recovery plan, quality-assured and approved by its board, that meets a series of requirements to be set by NHS Improvement, and that is agreed by NHS Improvement. The financial recovery plan shall be submitted to NHS Improvement no later than 3 working days before the second Progress Review Check (defined below).
- 1.3. The scope and detailed content of the financial recovery plan will be as agreed with NHS Improvement. It will likely include but not be limited to:
- 1.3.1. actions to address the key issues, with a high level milestone plan for the Licensee's key schemes to deliver the financial recovery plan;
 - 1.3.2. a monthly profile of underlying and planned financials; including the monthly phasing of the CIPs;
 - 1.3.3. a credible trajectory to a surplus position within a reasonable period;
 - 1.3.4. 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;
 - 1.3.5. details of how the Licensee will deploy sufficient resources to ensure implementation of the financial recovery plan;
 - 1.3.6. a description of systems and processes the Board will use to gain assurance on the delivery of the CIPs and the wider financial recovery plan; and
 - 1.3.7. details of the Licensee's governance arrangements for approval and delivery of the financial recovery plan.

- 1.4. When developing the plan, the Licensee will engage effectively with key stakeholders, including commissioners, and will reflect their views appropriately in the financial recovery plan.
- 1.5. The financial recovery plan is 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 financial recovery plan once approved by NHS Improvement.

2 Financial recovery plan delivery

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

3 Financial Improvement Director and NHS Improvement team

- 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 financial recovery plan. The Licensee will similarly cooperate with the NHS Improvement team supporting the Financial Improvement Director.
- 3.2 The Licensee will provide the Financial Improvement Director and the NHS Improvement team supporting them with full access to the Licensee's key personnel, meetings, resources, Board members, advisers and information, as well as any other members of its staff considered necessary by NHS Improvement, 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 meet the NHS Improvement Executive Sponsor and other representatives of NHS Improvement, including the Financial Improvement Director, for periodic 'Financial Special Measures Progress Review Checks' as determined by NHS Improvement. The initial Financial Special Measures Progress Review Check will follow the completion of the diagnostic work at a date specified by NHS Improvement. The focus and timing of subsequent Financial Special Measures Progress Review Checks, and the requirements on the Licensee in respect of each Financial Special Measures Progress Review Checks will be determined by NHS Improvement.
- 5.2 The Licensee will attend other meetings or, if NHS Improvement stipulates, conference calls, during the period of Financial Special Measures to discuss its progress in meeting the undertakings set out above. 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.

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

Quality Special Measures

1. Governance

- 1.1 The Licensee will, in a timely manner, take all reasonable steps to meet the applicable quality standards overseen by the CQC. This includes taking the actions outlined in paragraphs 1.2 to 1.7 below.
- 1.2 The Licensee will take immediate steps to address the patient safety concerns identified in the warning notice to the satisfaction of the CQC, and any further action necessary to ensure the warning notice is lifted as soon as reasonably practicable.
- 1.3 The Licensee will, within a timeframe to be agreed with NHS Improvement, submit to NHS Improvement a recovery plan setting out the steps it will take to achieve the objective outlined in paragraph 1.1 above, including how it will address the issues and recommendations outlined in the CQC Report; and any risks and mitigations to its achievement.
- 1.4 The Licensee will periodically assess and, where necessary, revise its recovery plan to ensure it remains deliverable and sufficient to address the objective outlined in paragraph 1.1. Any amendments will be agreed with NHS Improvement in a timely manner.
- 1.5 The Licensee will deliver, or demonstrate that it can deliver, the recovery plan in accordance with the timescales outlined in the plan.
- 1.6 The Licensee will provide, at a date to be agreed with NHS Improvement, a report demonstrating how the board is assured that the objective in paragraph 1.1 has been met.
- 1.7 The Licensee will ensure that the delivery of the recovery plan and other measures to improve quality and operational performance do not compromise its overall financial position. The Licensee will keep the financial cost of its quality improvements under close review and will notify NHS Improvement as soon as practicable of any matters which are identified as potentially having a material impact the Licensee's overall financial position.

2. Improvement Director

- 2.1 The Licensee will co-operate and work with any Improvement Director(s) who may be appointed by NHS Improvement to oversee and provide independent assurance to NHS Improvement on the Licensee's delivery of the recovery plan and improvement of quality of care the Licensee provides.

3. Buddy Trust and other partner organisations

- 3.1 The Licensee will co-operate and work with any partner organisations (this may include one or more "Buddy Trusts") who may be appointed by NHS Improvement to:
 - 3.1.1 support and provide expertise to the Licensee; and

- 3.1.2 assist the Licensee with the delivery of the recovery plan and the improvement of the quality of care the Licensee provides.
- 3.2 The Licensee will work with any such partner organisation on such terms as may be specified by NHS Improvement.
4. General
- 4.1 The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.
- 4.2 Such programme management and governance arrangements must enable the Board to:
- 4.2.1 obtain clear oversight over the progress in delivering the undertakings;
 - 4.2.2 obtain an understanding of the any risks to the successful achievement of the undertakings and ensure appropriate mitigation of any such risks; and
 - 4.2.3 hold individuals to account for the delivery of the undertakings.
- 4.3 The Licensee will provide regular reports to NHS Improvement on its progress in meeting the undertakings set out above and will attend meetings, or, if NHS Improvement stipulates, conference calls, as required, to discuss its progress in meeting those undertakings. These meetings will take place once a month unless NHS Improvement otherwise stipulates, at a time and place to be specified by NHS Improvement and with attendees specified by NHS Improvement.
- 4.4 The Licensee will provide NHS Improvement with the assurance relied on by its Board in relation to its progress in delivering these undertakings, upon request.
- 4.5 The Licensee will comply with any additional relevant reporting or information requests made 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 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 UNDERTAKING.

LICENSEE

Signed Richard Sunley, Interim Chief Executive



Dated 16 May 2017

NHS IMPROVEMENT

Signed (Executive Regional Managing Director)



Dated 17 May 2017