

ENFORCEMENT UNDERTAKINGS

LICENSEE:

Oxford University Hospitals NHS Foundation Trust
John Radcliffe Hospital
Headley Way
Headington
Oxford
OX3 9DU

DECISION

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").

On 1 June 2017, NHS Improvement accepted undertakings from the Licensee relating to RTT performance. On 29 May 2018, NHS Improvement issued a compliance certificate for paragraph 1.2 of the undertakings.

These undertakings relate to finance and A&E performance, but also replace and supersede those undertakings accepted on 1 June 2017 for which no certificate has been issued, which related to RTT performance. This ensures that the undertakings which have been accepted by NHS Improvement and remain outstanding are set out in a single document and that those relating to RTT performance have been varied and updated.

In this document, "NHS Improvement" means Monitor.

GROUNDINGS

1. Licence

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

BREACHES

2. Operational Performance and Financial Sustainability

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(4)(c) and FT4(5)(a) to (e).

2.2. In particular:

Operational performance

2.2.1. The Licensee has failed to meet the monthly referral to treatment (RTT) performance trajectory submitted and agreed with NHS Improvement since June 2016.

2.2.2. The Licensee does not have an adequate detailed improvement plan in relation to RTT or a refreshed 18/19 Demand and Capacity plan. As a result, the Licensee's Board is not yet sighted on milestones for delivery of actions, or the level of RTT performance deliverable over the next 12 months.

2.2.3. The Licensee's Board has not demonstrated sufficient challenge to the absence of an RTT recovery implementation plan and has not, in relation to RTT, had oversight of the milestones for delivery of actions or the Licensee's recovery.

2.2.4. NHS Improvement considers the Licensee's current governance arrangements do not provide sufficient dedicated senior clinical and operational time focused on RTT recovery, recognising the scale of productivity and performance improvement the Licensee is seeking to achieve.

2.2.5. The Licensee has not achieved the A&E national standard throughout 2016/17 and 2017/18. The Licensee does not have a comprehensive urgent care improvement plan which reflects detailed analysis of workforce or demand and capacity at the Licensee. The Trust does not have a comprehensive workforce strategy in place.

Financial Issues

2.2.6. For 2017/18 the Licensee reported a significant negative variance against its control total plan. The control total for 2017/18 was a surplus of £19.0m, excluding Sustainability and Transformation Funding (STF). The Licensee reported a deficit of £12.7m, excluding STF.

- 2.2.7. The Licensee has rejected its 2018/19 control total surplus of £23.7m, excluding STF, and is planning for a deficit of £25.0m, excluding STF.
- 2.2.8. The Licensee is forecasting a need for cash support from the Department of Health and does not yet have a financial plan to return to a sustainable financial position.
- 2.3. These failures by the Licensee demonstrate a failure of governance and financial management arrangements, including but not limited to, a failure to establish and implement clear reporting lines and accountabilities throughout its organisation and failure to establish and effectively implement systems and/or processes:
 - 2.3.1. for timely and effective scrutiny and oversight by the Board of the Licensee's operations;
 - 2.3.2. to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
 - 2.3.3. to ensure compliance with health care standards binding on the Licensee;
 - 2.3.4. 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
 - 2.3.5. to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making.

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. 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, pursuant to section 106 of the Act:

1. Governance

- 1.1. The Licensee will take all reasonable steps to put in place principles, systems and standards of governance which would reasonably be regarded as appropriate for a supplier of healthcare services to the NHS.
- 1.2. In meeting the requirements of paragraph 1.1, the Licensee will, in particular:
 - 1.2.1. procure and fully engage in a well led review, to a scope and timescale and from a supplier to be agreed with NHS Improvement should NHS Improvement require the Licensee to do so;
 - 1.2.2. engage in a well-led governance follow-up review for the Oxfordshire system should NHS Improvement require the Licensee to do so;
 - 1.2.3. review and strengthen the Licensee's governance arrangements, including quality governance arrangements, clinical leadership, divisional escalation and risk management arrangements, and the lines of accountability for overseeing development and improvement plans;
 - 1.2.4. review and improve the operational performance information and underlying data used by the Licensee in its reporting and management of key operational performance information; and
 - 1.2.5. In meeting the requirements of paragraph 1.1.1, the Licensee will, in particular produce a summary analysis of the various well led reviews carried out over the previous 18 months, against the NHS Improvement Well Led Framework guidance issued in June 2017, by a date to be agreed with NHS Improvement.
- 1.3. The Licensee will consolidate the findings of 1.2.1 to 1.2.4 and other existing reviews into a comprehensive plan for improving the Licensee's principles, systems and standards of governance (the 'Governance plan'), to be agreed by the Licensee's Board and NHS Improvement, and demonstrate that it can deliver that plan.

2. Planned care

- 2.1. The Licensee will take all reasonable steps to deliver the 2018/19 Planning Guidance requirements to maintain the size of the elective waiting list and take all reasonable steps to as a minimum halve the number of patients waiting more than 52 weeks for an elective procedure, and to maintain or reduce the current backlog, within the constraints of system affordability.
- 2.2. The Licensee will have a process to identify patients at risk of clinical harm, including patients experiencing delays starting treatment for elective and non-elective care, in particular 52 week wait patients. This will be clinically led with a methodology for determining harm. The Licensee will develop and implement a governance process linked to the Licensee's risk register in accordance with best practice guidelines.
- 2.3. In meeting the requirements of paragraph 2.1 the Licensee will work with Oxford Health NHS Foundation Trust, Oxfordshire Clinical Commissioning Group and NHS England (Wessex) Specialist Commissioning Group (the "system partners") to develop and agree a jointly prepared medium-term RTT improvement plan ("the RTT plan"), such plan to be agreed by NHS England and NHS Improvement. Such steps will include the preparation of comprehensive demand and capacity models to inform the RTT plan.

3. Emergency care

- 3.1. The Licensee will take all reasonable steps to deliver the minimum levels of 4 hour performance outlined in the 2018/19 Planning Guidance and provide high quality care for patients in a manner which is financially sustainable for both the Licensee and its lead commissioners.
- 3.2. In meeting the requirements of paragraph 3.1 the Licensee will, in particular, continue to develop its comprehensive A&E recovery plan and trajectory, as agreed by the Licensee Board and by NHS Improvement (the 'A&E plan') and demonstrate that it can deliver that plan.
- 3.3. The Licensee will also participate in the development and implementation of an Oxfordshire Urgent Care Plan with the system partners.

4. Financial sustainability

- 4.1. The Licensee will take all reasonable steps to return to financial sustainability.
- 4.2. In meeting the requirements of paragraph 4.1 the Licensee will in particular:

- 4.2.1. develop and submit a financial recovery plan and trajectory, to be agreed by the Licensee Board and by NHS Improvement (the 'FRP') and demonstrate that it can deliver that plan;
- 4.2.2. undertake a review of the underlying drivers of the Licensee's deficit, to a scope and timescale to be agreed with NHS Improvement and incorporate the findings into the FRP;
- 4.2.3. engage in a programme of productivity improvement co-designed with the NHS Improvement Operational Productivity team and incorporate the opportunities identified in that programme into the FRP;
- 4.2.4. implement an action plan to address the findings and recommendations of the KPMG Cash Management Review; and
- 4.2.5. co-operate and work with any Improvement Director(s) and Improvement Senior managers who may be assigned by NHS Improvement to provide expertise and support the Licensee's delivery of the FRP and the trust's operational improvement plans.

5. Strategic workforce planning

- 5.1. The Trust will develop a comprehensive workforce strategy linked to Trust objectives and taking into account clinical and quality strategies to include, but not limited to, medical, nursing, AHP and non-clinical workforce recruitment and retention strategies, workforce productivity, approaches to job planning and clinical safety. The Trust's workforce strategy will include an implementation plan and will be agreed by the Board, which will have oversight of delivery.

6. Development and delivery of plans

- 6.1. The Licensee will ensure that the Governance plan, RTT plan, A&E plan and FRP (together, the 'Plans') are developed with a focus on quality and delivered in a robust and coherent manner which enables the Licensee meet the requirements of paragraphs 1.1, 2.1, 3.1 and 4.1.
- 6.2. In meeting the requirements of paragraph 6.1 the Licensee will, ensure that the Plans:
 - 6.2.1. Form a single, coherent and comprehensive approach to addressing the challenges facing the Licensee, together with the Licensee's

other key plans, including but not limited to the Sustainability and Transformation Plan;

- 6.2.2. Include the actions required to meet the requirements of paragraphs 1.1, 2.1, 3.1 and 4.1, with appropriate timescales, resourcing and clear accountabilities to clinical and non-clinical action owners;
 - 6.2.3. Describe the key risks to meeting the requirements of paragraphs 1.1, 2.1, 3.1 and 4.1 and mitigating actions being taken;
 - 6.2.4. Include appropriate quality impact assessments and details of how quality impact will be monitored;
 - 6.2.5. Describe how the Licensee will assess progress against quality impact assessments, including the quality assurance measures to be used; and
 - 6.2.6. Are submitted by a date to be agreed by NHS Improvement, for discussion and agreement with NHS Improvement.
- 6.3. The Licensee will keep the Plans and their delivery under review and provide appropriate assurance to its Board regarding progress towards meeting the requirements of paragraphs 1.1, 2.1, 3.1 and 4.1, such assurance to be provided to NHS Improvement on request. Where matters are identified which materially affect the Licensee's ability to meet the requirements of paragraphs 1.1, 2.1, 3.1 and 4.1, whether identified by the Licensee or another party, the Licensee will notify NHS Improvement as soon as practicable and update and resubmit the affected plan(s) within a timeframe to be agreed with NHS Improvement.

7. Funding conditions and spending approvals

- 7.1. 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.
- 7.2. 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.

7.3. 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.

7.4. The Licensee will comply with any spending approvals processes that are deemed necessary by NHS Improvement.

8. Programme management

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

8.2. Such programme management and governance arrangements must enable the board to:

8.2.1. obtain clear oversight over the process in delivering these undertakings;

8.2.2. obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and

8.2.3. hold individuals to account for the delivery of the undertakings.

9. Meetings and reports

9.1. The Licensee will:

9.1.1. Attend meetings or, if NHS Improvement stipulates, conference calls, at such times and places, and with such attendees, as may be required by NHS Improvement; and

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

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:

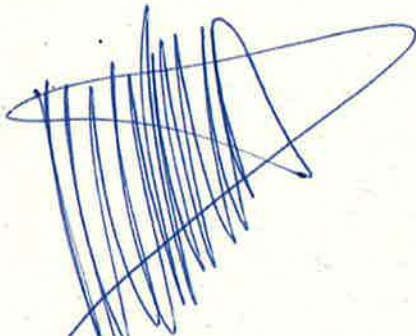
- Compliance with the health care standards binding on the Licensee; and
- Compliance with all requirements concerning quality of care.

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: 19/06/2018

NHS IMPROVEMENT

Signed



Amanda Lyons – Delivery & Improvement Director (Thames Valley) and member of the Regional Provider Support Group (South)

Dated:

19 June 2018

