



Improvement

ENFORCEMENT UNDERTAKINGS

LICENSEE:

The Queen Elizabeth Hospital, King's Lynn NHS Foundation Trust
Foundation Trust Office
Gayton Road
King's Lynn
Norfolk
PE30 4ET

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"). In this document, "NHS Improvement" means Monitor.

The enforcement undertakings include the actions which have been agreed in consequence of the Licensee being placed in special measures for quality in September 2018.

Whilst the Licensee has technically met the enforcement undertakings in relation to financial governance accepted by NHS Improvement on 25 April 2018, in submitting the required Operational Plan and supporting information, the Licensee has not demonstrated the required financial governance as it has not delivered financial performance in line with the submitted plan, and there has been significant deterioration in the Licensee's financial position against that plan. On this basis NHS Improvement and the Licensee have agreed a new set of undertakings relating to financial governance.

GROUNDNS

1. Licence

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

BREACHES

2. Quality and Governance 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(4)(a); FT4(5)(a), (c) (d) and (f); FT4(6)(a), (c), (d) (e) and (f).

In particular:

- 2.2. The Licensee underwent a comprehensive CQC inspection in April 2018. The CQC's main concerns were focussed on maternity care and governance, urgent care, medical, workforce and board leadership. The CQC also issued a section 29a Warning Notice and section 31 Warning Notice relating to maternity. The Licensee was rated by the CQC in September 2018 as 'Inadequate' for 'Safe' and 'Well-led'; 'Requires Improvement' for 'Responsive' and 'Effective'; and 'Good' for 'Caring'. The Licensee was rated 'Inadequate' overall.
- 2.3. The CQC report published on 13 September 2018 ('CQC Report') includes the following findings:
 - 2.3.1. The Licensee was issued with 55 must-do and 38 should-do actions.
 - 2.3.2. The main areas of concern identified are within maternity, leadership, governance, WHO surgical checklist, infection prevention and control, management of risks, staffing, requirements for fit and proper persons, mandatory training and resuscitation trolleys.
- 2.4 The Licensee was issued with six requirement notices and two enforcement (Section 29a and 31) actions to address safety in maternity services, governance, staffing, application of fit and proper persons guidance, safeguarding and Duty of Candour.
- 2.5. These breaches by the Licensee demonstrate a failure of governance arrangements in particular but not limited to a failure by the Licensee to ensure appropriate systems and standards of governance, adequate oversight by the Board and establishment and implementation of associated governance systems and processes including those relating to quality and to ensure appropriate and sufficient capacity.

3. Financial 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), (d) and (f).

In particular:

- 3.2. The Licensee has reported a £16.8m deficit for Month 6 2018/19 against an original planned deficit of £10.9m, excluding Provider Sustainability Funding.
- 3.3. The Licensee submitted a revised 2018/19 forecast outturn deficit at Month 6 of £34.2m, which is an adverse variance to plan of £18.4m excluding Provider Sustainability Funding and a £24.5m adverse variance to plan including Provider Sustainability Funding.



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- 2.5. These breaches by the Licensee demonstrate a failure of governance arrangements in particular but not limited to a failure by the Licensee to ensure appropriate systems and standards of governance, adequate oversight by the Board and establishment and implementation of associated governance systems and processes including those relating to quality and to ensure appropriate and sufficient capacity.

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In particular:

- 3.2. The Licensee has reported a £16.8m deficit for Month 6 2018/19 against an original planned deficit of £10.9m, excluding Provider Sustainability Funding.
- 3.3. The Licensee submitted a revised 2018/19 forecast outturn deficit at Month 6 of £34.2m, which is an adverse variance to plan of £18.4m excluding Provider Sustainability Funding and a £24.5m adverse variance to plan including Provider Sustainability Funding.

3.4. The Licensee's recent Use of Resources assessment (September 2018) rated the Trust as Requires Improvement. Key drivers of this rating were the Trust's significant deficit and reliance on loan finance support, high agency expenditure, and sub-optimal use of job planning and staff rostering.

3.5. These breaches by the Licensee demonstrate a failure to:

- 3.5.1. provide reasonable safeguards against the risk of being unable to carry on as a going concern;
- 3.5.2. establish and effectively implement systems and/or processes 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
- 3.5.3. to identify and manage material risks to comply with its licence.

4. Operational Performance breaches

4.1. 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) and (c).

4.2. In particular:

4.2.1. The Licensee has breached its Accident and Emergency target in the last four quarters (Q3 & Q4 2017/18 and Q1 & Q2 2018/19).

5. These breaches 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 to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively and to ensure compliance with health care standards binding on the Licensee including but not restricted to standards specified by the Secretary of State, the CQC, the NHS Commissioning Board and statutory regulators of health care professions.

5.1. Need for action

5.1.1. 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.

6. Appropriateness of Undertakings

In considering the appropriateness of accepting in the 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. Quality Improvement Plan

- 1.1. The Licensee will take all reasonable steps to address the concerns identified in, but not limited to, the CQC Report, including carrying out the actions set out in the CQC Report in accordance with timescales as determined by the CQC such that, upon re-inspection by the CQC within 12 months of the date of the CQC Report (or such other date as CQC may determine), the Licensee will no longer be found to be 'inadequate' in any of the CQC domains.
- 1.2. The Licensee will demonstrate that it is able to deliver its Quality Improvement Plan (QIP) submitted to NHS Improvement on 5 October 2018 including demonstrating that it has sufficient capacity and capability at both executive and other levels of management to enable delivery of the QIP. The Licensee will ensure it has in place clear board governance processes which support delivery of the QIP and that any impact of the QIP on operational and financial performance are clearly considered at all stages of decision making.
- 1.3. The Licensee will consult with relevant stakeholders during the delivery of the QIP, including NHS Improvement, CQC and NHS England. Consultation will take place via the single system oversight and assurance group, led by NHS Improvement, established to provide system support to the Licensee in the delivery of the QIP. The Licensee will modify the QIP if instructed by NHS Improvement.
- 1.4. The Licensee will keep the QIP and its delivery under review. Where matters are identified which materially affect the Licensee's ability to deliver the QIP, whether identified by the Licensee or another party, the Licensee will notify NHS Improvement as soon as practicable and update and resubmit the QIP within a timeframe to be agreed by NHS Improvement.
- 1.5. The Licensee will ensure that the delivery of the QIP 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 on the Licensee's overall financial position.
- 1.6. The Licensee will arrange with NHS Improvement and with local partners a series of clinical visits each quarter to review and assess progress against the implementation of the QIP. The scope and the review team will be agreed by NHS Improvement.

2. Financial Governance

- 2.1. The Licensee will provide, by a date to be agreed with NHS Improvement, a robust and detailed board-approved financial recovery plan for 2018/19. This must clearly set out the action being taken and to be taken, along with clear lines of accountability for delivery, in order to deliver the best possible financial outturn for 2018/19.
- 2.2. The Licensee will prepare a robust board approved operational plan for 2019/20 ('the operational plan') which fully meets the requirements of the 2019/20 planning guidance, and includes a well-developed cost improvement programme, by the nationally prescribed deadlines.
- 2.3. In support of the requirement in paragraphs 2.1 and 2.2, the Licensee must provide to NHS Improvement, as required, any supporting information, in order for NHS Improvement to complete a comprehensive review of the Licensee's 2018/19 financial recovery plan and 2019/20 operational plan.
- 2.4. 2.4 The Licensee will provide NHS Improvement with weekly progress updates in relation to the requirements in paragraphs 2.1 and 2.2. The frequency of updates may be altered, with the agreement of NHS Improvement, to reflect, for example, sickness, annual leave or public holidays.
- 2.5. The Licensee will prepare a board-approved 5-year financial strategy that is aligned to the clinical, workforce, IT, estates and other relevant Licensee strategies, and is aligned wherever possible to wider system plans. This will need to include an updated analysis of deficit drivers, set out how the Licensee will eliminate the non-structural deficit and be supported by an action plan to address the improvements identified in the use of resources report (dated 13 September 2018).
- 2.6. The Licensee will allow access to documents, meetings and key members of staff as requested to enable NHS Improvement to undertake a financial governance review, the scope and date of which will be determined by NHS Improvement in discussion with the Licensee.

3. Funding conditions and spending approvals

- 3.1. Where interim support financing or planned term support financing is provided by the Secretary of State for Health and Social Care 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.
- 3.2. 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.

3.3. Where the Licensee received payments from the Sustainability and Transformation fund, the Licensee will comply with any terms or conditions which attach to the payments.

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

Operational Performance

4. Accident and Emergency improvement plan

4.1. The Licensee will provide to NHS Improvement, by a date to be agreed with NHS Improvement, a Board-approved plan for A&E performance recovery ("the A&E plan"). This will include:

- 4.1.1. The key milestones and how they will be achieved;
- 4.1.2. What resources the Licensee has in place to deliver the A&E plan;
- 4.1.3. The key risks to delivery, monitoring and mitigations;
- 4.1.4. The key performance indicators (KPIs) to monitor the A&E plan; and
- 4.1.5. How the board will have oversight and overall governance over the A&E plan.

4.2. Prior to submission to NHS Improvement the A&E improvement plan will be agreed with the Licensee's commissioners.

4.3. The Licensee will provide to NHS Improvement a monthly Board-approved report on progress against the A&E Plan, which includes the following:

- 4.3.1. progress being made against the key milestones;
- 4.3.2. if there are any areas of slippage against milestones, how performance will be recovered and monitored; and,
- 4.3.3. any key risks to delivery of the Plan, and the related mitigations.

4.4. By a date to be agreed, the Licensee will deliver the A&E improvement plan and take such other reasonable steps as are necessary to ensure that it is able to meet all A&E targets on a sustainable basis.

4.5. The Licensee will provide, by a date to be agreed with NHS Improvement, a report demonstrating how the Board is assured that the requirements of paragraphs 4.1 to 4.4 above have been met. The scope of the report will be agreed with NHS Improvement.

5. Improvement Director

5.1. The Licensee will co-operate and work with an 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 QIP and improvement of quality of care the Trust provides.

6. Buddy trust and other Partner Organisations

6.1. The Licensee will co-operate and work with any such partner organisations (this may include one or more 'Buddy Trusts') who may be appointed by NHS Improvement to:

6.1.1. Support and provide expertise to the Licensee; and

6.1.2. Assist the Licensee with the delivery of the QIP and the improvement of the quality of care the Licensee provides, and assist the Licensee with the delivery of the A&E Plan.

6.2. The Licensee will work with any such partner organisations on such terms as may be specified by NHS Improvement.

7. Board Effectiveness

7.1. The Licensee will take all reasonable steps to address the governance concerns identified in the CQC Report and the Independent Review of Board capacity, capability and effectiveness by PwC.

7.2. The Licensee will develop and submit a plan to NHS Improvement, including key milestones, setting out the steps which it will take to comply with the review recommendations (the 'Board Effectiveness Plan'). The Licensee will modify the Board Effectiveness Plan if instructed by NHS Improvement.

7.3. The Licensee will deliver the Board Effectiveness Plan by a date to be agreed with NHS Improvement and will meet the key milestones.

8. Programme Management

8.1. The Licensee will implement programme management and governance arrangements to facilitate the delivery of these undertakings. Such arrangements must enable the Board to;

8.1.1. obtain a clear oversight of the progress in delivering these undertakings;

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

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

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

9. Meetings and reports

9.1. The Licensee will 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.

9.2. The Licensee will provide NHS Improvement with such reports in relation to the matters covered by these undertakings as NHS Improvement may require.

9.3. The Licensee will attend monthly oversight and assurance meetings and executive calls with NHS Improvement to discuss its progress in delivering the QIP and A&E Plan.

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



Acting Chief Executive of Licensee

Dated: 20 DECEMBER 2019

NHS IMPROVEMENT

Signed



Member of the Regional Provider Support Group (Midlands and East)

Dated: 14/1/19