

Appendix 1

ENFORCEMENT UNDERTAKINGS

LICENSEE:

Royal Free London NHS Foundation Trust ("the Licensee")
Royal Free Hospital
Pond Street
London NW3 2QG

Barnet Hospital
Wellhouse Lane
Barnet, Hertfordshire
EN5 3DJ

Chase Farm Hospital
The Ridgeway
Enfield, Middlesex
EN2 8JL

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 ("the Act").

In this notice, "NHS Improvement" means "Monitor".

GROUNDINGS

1. Licence

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

2. Breaches of the Licence

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: CoS3(1), FT4(5)(a) and (d) and (f), and FT4(7).

2.2 In particular:

2.2.1 At month 9 in 2016/17, the Licensee had a £37.6m adverse variance to plan (excluding non-recovery of Sustainability and Transformation Fund (STF)) and had accessed £30m of cash support from the Department of Health.

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- 2.2.2 At month 9 in 2016/17, the Licensee submitted a forecast outturn of £43.9m deficit (excluding STF) – a £41.1m variance against a planned deficit of £2.8m (excluding STF).
- 2.2.3 At month 11, the Licensee submitted a forecast outturn that meets the planned deficit of £2.8m. However, this recovery is non-recurrent in nature and obscures a significant and underlying deficit (£110m-£120m for 2016/17). The Licensee's plan for 2017/18 submitted in December 2016 is for a £33m deficit (a variance of £57m to control total, excluding £19.2m STF).
- 2.2.4 The Licensee does not have a robust plan to deliver the 2017/18 plan submitted in December 2016 or to address the underlying deficit in the longer term.

- 2.3 These matters demonstrate a failure of the Licensee's corporate governance arrangements and financial management, in particular but not limited to failures to-

- (i) apply systems and standards of corporate governance and financial management which provide reasonable safeguard against the risk of the Licensee being unable to carry on as a going concern; and
- (ii) establish and effectively implement systems and/or processes to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively and for effective financial decision-making, management and control.

- 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. Financial sustainability

- 1.1. The Licensee will take all reasonable steps to deliver its services on a financially sustainable basis, including but not limited to the actions in paragraphs 1.2 to 1.10 below. As part of this, the Licensee will take all reasonable steps to improve its financial position and minimise its external funding requirement.

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- 1.2. The Licensee will, by a date specified by NHS Improvement, develop and submit for approval to NHS Improvement a robust understanding of the underlying causes of the Licensee's financial position on a site by site basis that need to be addressed to ensure the Licensee's financial recovery ("the Diagnostic").
- 1.3. Taking into account the Diagnostic, the Licensee will develop with agreement from its Board and submit for approval to NHS Improvement:
 - 1.3.1 by a date to be specified by NHS Improvement, a detailed short term financial recovery plan ("short term FRP") which will, in particular, ensure delivery of a realistic but stretching improvement in financial performance (reported and underlying basis) for 2017/18; and
 - 1.3.2 by a date to be specified by NHS Improvement, a detailed long term financial recovery plan ("long term FRP") which will, in particular, ensure return to an underlying financial balance or better within 3 years or a timeframe to be specified by NHS Improvement. These will be known collectively as "the FRPs".
- 1.4. The Licensee will agree the scope and detailed content of the FRPs with NHS Improvement, but will ensure they include between them:
 - 1.4.1 actions to address the key issues identified, including a high level milestone plan for delivery of the Licensee's key schemes to deliver the FRPs;
 - 1.4.2 details of the extent to which recovery actions are within the Licensee's control and the extent to which wider system involvement (including, but not limited to, the North Central London Sustainability and Transformation Plan footprint) is required, and how the Licensee is engaging with the wider system to ensure ownership for these actions is appropriately taken;
 - 1.4.3 a credible trajectory to financial balance or better within 3 years, phased on a monthly basis for the first year;
 - 1.4.4 details of actions being taken to minimise reliance on Department of Health distressed financing;
 - 1.4.5 an individual service level trajectory for returning loss making services identified in the Diagnostic to a break even position or to an agreed alternative delivery solution;
 - 1.4.6 details of how the Licensee is working with commissioners to identify and resolve any areas of inappropriate under-funding;
 - 1.4.7 details of extra controls and other measures the Licensee has put in place to immediately strengthen financial control, which may relate, for example, to staff pay costs, procurement, cash, delegated financial limits and programme management offices;
 - 1.4.8 details of provider collaboration schemes across the North Central London Sustainability and Transformation Plan footprint to accelerate the delivery of efficiency savings;

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- 1.4.9 details of how the Licensee will deploy sufficient resource and expertise to ensure implementation of the FRPs;
 - 1.4.10 details of the management of financial risks associated with transactions undertaken, including risks currently offset by central support funding;
 - 1.4.11 details of the Licensee's governance arrangements for approval and delivery of the financial recovery plan, and how progress in terms of financial performance and delivery milestones will be reported to the Board;
 - 1.4.12 analysis of upside and downside risks to the plan, and key factors that will determine crystallising of these risks.
- 1.5. In relation to the FRPs, the Licensee will consult with its commissioners and will ensure that they have regard to the views of its commissioners.
 - 1.6. The Licensee will modify the FRPs if needed following input from NHS Improvement after it has received and considered the FRPs.
 - 1.7. The Licensee will demonstrate that it is able to deliver the FRPs, including demonstrating that it has sufficient senior management capacity and clinical leadership engagement to enable delivery.
 - 1.8. The Licensee will develop and agree with NHS Improvement a set of Key Performance Indicators (KPIs) to assess the impact and performance of the FRPs.
 - 1.9. The Licensee will deliver all the actions in the FRPs in accordance with timescales agreed by NHS Improvement and with due regard to the Licensee's obligations on quality and operational performance.
 - 1.10. The Licensee will keep the FRPs and their delivery under review. Where matters are identified which materially affect the Licensee's ability to deliver the FRPs and to meet the requirements of paragraph 1.1, whether identified by the Licensee or another party, the Licensee will notify NHS Improvement as soon as practicable and update and resubmit the FRPs within a timeframe to be agreed with NHS Improvement.

2. Senior Financial Adviser

The Licensee will co-operate and work with a Senior Financial Adviser 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 FRPs.

3. Distressed funding

- 3.1 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

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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.

4. Financial governance

The Licensee will, if deemed necessary by NHS Improvement, commission an independent external review of its management capacity and capability, and financial governance systems and processes, based on a scope to be agreed with NHS Improvement.

5. Financial controls

The Licensee will comply with any financial controls that are deemed necessary by NHS Improvement.

6. Access

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

7. Meetings

The Licensee will attend monthly executive challenge meetings with NHS Improvement. The purpose of the challenge meetings is to consider the Licensee's understanding of the underlying causes of the financial position, the development of its FRPs and to demonstrate significant progress in delivering financial improvement.

8. General

- 8.1 The Licensee will implement sufficient programme management and governance arrangements to enable delivery of these plans and to meet all other commitments in these undertakings.
- 8.2 Such programme management and governance arrangements will enable the Board to:
 - 8.2.1 Obtain a clear oversight over the progress in delivery of the FRPs and in meeting all other commitments in these undertakings;
 - 8.2.2 Obtain an understanding of any risks to the successful achievement of the plans and to meeting all other commitments in these undertakings and ensure appropriate mitigation of any such risks; and
 - 8.2.3 Hold individuals to account for the delivery of the FRPs and for meeting all other commitments in these undertakings.

THE REQUIREMENTS IN THIS NOTICE ARE WITHOUT PREJUDICE TO:

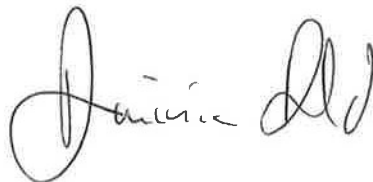
- (i) **THE REQUIREMENT ON THE LICENSEE TO COMPLY WITH THE CONDITIONS IN ITS LICENCE;**
- (ii) **THE REQUIREMENTS OF THE ADDITIONAL LICENCE CONDITION;**
- (iii) **THE EXISTING UNDERTAKINGS, INCLUDING ANY VARIATIONS TO THOSE UNDERTAKINGS;**
- (iv) **ANY ACTION WHICH NHS IMPROVEMENT MAY CONSIDER APPROPRIATE IN RESPONSE TO A FURTHER BREACH OF THE ADDITIONAL LICENCE CONDITION.**

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

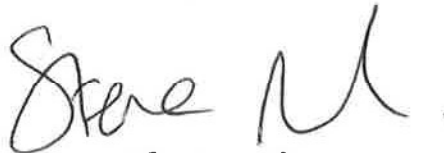
Signed (Chair of Licensee)



Dated:

15-11-17

NHS IMPROVEMENT



Signed (Chair of Regional Provider Support Group)

23-11-17

Dated:

