

Appendix 1: DRAFT UNDERTAKINGS

NHS TRUST:

Southport and Ormskirk NHS Trust
Southport and Formby District General Hospital
Town Lane
Southport
Merseyside
PR8 6PN

DECISION:

On the basis of the grounds set out below and pursuant to the powers exercisable by NHS Improvement under or by virtue of the National Health Service Act 2006 and the TDA Directions, NHS Improvement has decided to accept undertakings from the Trust.

DEFINITIONS:

In this document:

“the conditions of the Licence” means the conditions of the licence issued by Monitor under Chapter 3 of Part 3 of the Health and Social Care Act 2012 in respect of which NHS Improvement has deemed it appropriate for NHS trusts to comply with equivalent conditions, pursuant to paragraph 6(c) of the TDA Directions;

“NHS Improvement” means the National Health Service Trust Development Authority;

“TDA Directions” means the National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016.

GROUNDINGS:

1. The Trust

The trust is an NHS trust all or most of whose hospitals, facilities and establishments are situated in England.

2. Issues and need for action

NHS Improvement has reasonable grounds to suspect that the trust has provided and is providing health services for the purposes of the health service in England while failing to comply with the following conditions of the Licence: FT4(5)(a), (c), (d), and (f).

Quality Issues

2.1 In particular:

2.1.1 The previous CQC action plan from the unannounced inspection in April 2016 had not been completed within the agreed timescales. Actions deemed complete were found to be lacking assurance.

2.1.2 Following an inspection on 20th Nov 2017 – 7th December 2017, the Care Quality Commission (“CQC”) rated the trust as ‘Requires Improvement’ overall. The ‘caring’ domain was rated good. The Trust was rated as ‘requires improvement’ in the Safe,

Effective and Responsive domains. The Well-led domain was rated inadequate. The CQC's report dated 13th March 2018 set out a range of actions that the Trust was required to take in order to improve.

2.1.3 The CQC found that the Trust was in breach of nine legal requirements. These were in relation to fit and proper persons, good governance and duty of candour:

- Regulation 5: Fit and proper persons: directors
The provider must ensure that the trust has an effective system in place to meet their legal obligations in relation to fit and proper persons employed at director level.
- Regulation 17: Good Governance:
The provider must ensure there are trust-wide effective governance systems in place.
- Regulation 20: Duty of Candour:
The provider must ensure that the spirit of Duty of Candour is embraced in the service particularly in relation to notifiable safety incident investigations. Consideration should be given to wider involvement with relevant persons in the investigation and sharing of outcomes.

The nine breaches related to 6 services.

Financial Sustainability and Financial Governance Issues:

2.2 In particular:

2.2.1 The Trust did not agree its control total for 2017/18 and has not agreed the control total for 2018/19.

2.2.2 The Trust reforecast its 2017/18 outturn in month 10 and reported a deficit position of £33.6mm. This is £18.5m worse than its control total of £15.1m deficit, and £15.5m worse than the Trust's internal plan of an £18.1m deficit. In 2016/17, the trust reported a £14.1m adverse variance to plan with a deficit of £20.7m against a plan of £6.6m deficit.

2.2.3 In 2017/18, the Trust delivered CIP of £3.7m against a target of £5.8m. In 2016/17 it delivered £4.1m CIP against a target of £6.6m.

2.2.4 These failings by the Trust demonstrate a failure of governance arrangements including, in particular, failure to establish and effectively implement systems or processes:

- (a) to ensure compliance with the trust's duty to operate efficiently, economically and effectively; and
- (b) to ensure compliance with healthcare standards binding on the Trust.

2.3 Need for action:

NHS Improvement believes that the action which the trust has undertaken to take pursuant to these undertakings, is action required to secure that the failures to comply with the relevant requirements of the conditions of the Licence do not continue or recur.

UNDERTAKINGS

NHS Improvement has agreed to accept and the Trust has agreed to give the following undertakings.

1. Quality Improvement Plan

- 1.1. The trust will take all reasonable steps to address the concerns raised in the CQC report including carrying out the required actions in accordance with timescales to be agreed with CQC and NHS Improvement.
- 1.2. The trust will, by a date and in a form to be agreed with NHS Improvement, develop a plan (the "Quality Improvement Plan"), setting out the steps it will take to comply with paragraph 1.1, and will include key milestones for delivery.
- 1.3. The trust will demonstrate it is able to deliver the Quality Improvement Plan and meet the key milestones, including demonstrating that it has sufficient executive capacity to deliver the plan. The trust will demonstrate progress against the plan in line with agreed timescales through the trust's internal governance arrangements and NHSI improvement board in line with the challenged provider programme.
- 1.4. The trust will keep the Quality Improvement Plan and its delivery under review. Where matters are identified which materially affect the trust's ability to deliver the Quality Improvement Plan, the trust will notify NHS Improvement as soon as practicable and update and resubmit the Quality Improvement Plan within a timeframe to be agreed with NHS Improvement.
- 1.5. The trust will ensure that any quality initiatives that require delivery as part of the plan, will be done so within the financial resources available. NHSI will work with the trust to mitigate any risks financial or other that compromise the delivery of the quality improvement plan.
- 1.6. The trust will ensure it has sufficient capacity and capability to deliver against the plan.
- 1.7. The Quality Improvement Plan will be presented monthly to the improvement board until the level of assurance allows further review of the schedule for presentation.

2. Financial Sustainability and Financial Governance Plan

- 2.1. By September 2018 or such later date as NHS Improvement may agree, the trust will prepare and submit to NHS Improvement a realistic and robust plan for financial and clinical sustainability ("the Plan").
- 2.2. The Plan will include key milestones and actions to address the trust's financial decline and to take all reasonable steps to improve the trust's recurrent financial position.
- 2.3. If requested by NHS Improvement, the trust will commission an external assurance review of the Plan from a source and according to a scope and timing as NHS Improvement may specify and will implement the review findings.
- 2.4. The trust will articulate the timescales for delivery by September 2018 or such other later date as NHS Improvement may agree, and will meet the key milestones.
- 2.5. The trust will ensure it has sufficient capacity and capability to deliver the Plan.

3. Programme management

3.1. The trust will implement sufficient programme management and governance arrangements to enable delivery of these undertakings and it is proposed that this will become part of the responsibility of the Programme Management Office (PMO) that the trust is currently in the process of setting up.

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

- 3.2.1. obtain clear oversight over the process in delivering these undertakings;
- 3.2.2. obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and
- 3.2.3. hold individuals to account for the delivery of the undertakings.

4. Meetings and reports

4.1. The trust 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.

4.2. It is proposed that an update on the undertakings will be discussed as a regular item on the agenda of the Southport & Ormskirk Improvement Board (SOIB), which meets on a monthly basis.

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

Any failure to comply with the above undertakings may result in NHS Improvement taking further regulatory action. This could include giving formal directions to the trust under section 8 of the National Health Service Act 2006 and paragraph 6 of the TDA Directions.

THE TRUST

Signed



Chair or Chief Executive of Trust
Silas Nicholls, CEO

Dated
21 September 2018

NHS IMPROVEMENT

Signed



Chair of the Regional Provider Support Group (North)