

ENFORCEMENT UNDERTAKINGS

LICENSEE:

St George's University Hospitals NHS Foundation Trust
Blackshaw Road
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SW17 0QT
London

Any reference to "NHS Improvement" in this document is to be taken as a reference to Monitor.

BACKGROUND:

On 28 July 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 health care 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 by the Licensee with the conditions of its licence.

In place of the undertakings accepted by NHS Improvement on 28 July 2015, NHS Improvement is now proposing to take further regulatory action in the form of these undertakings for the reasons set out below. These undertakings replace and supersede the undertakings agreed on 28 July 2015 which cease to have effect from the date of these undertakings.

DECISION:

On 10 April 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.

The Licensee has agreed to deliver the Financial Special Measures actions as set out below.

FOUNDATIONS

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 failed to establish and effectively implement systems and/or processes for the purposes of the following conditions of its licence: CoS3 (1), FT4 (5) (a), (d), (f) and FT4 (7).

2.2 In particular, a number of the executive positions within the board of the Licensee are either vacant or being filled on an interim or acting basis meaning the Licensee does not have a fully substantive board in place.

2.3 Further, at month ten of the financial year 2016/17 the Licensee was demonstrating a significant negative variance against its control total plan and has rejected its 2017/18 control total. The Licensee meets the key criteria for consideration for financial special measures, as set out in Annex H to "Strengthening Financial Performance and Accountability in 2016/17" published 21 July 2016.

2.4 These matters demonstrate a failure of governance and financial management by the Licensee including, in particular,

- (a) failure to adopt and apply systems and standards of corporate governance and of financial management which would reasonably be regarded as:
 - i. suitable for a provider of the Commissioner Requested Services provided by the Licensee, and
 - ii. providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern;
- (b) failure to establish and effectively implement systems and processes:
 - i. to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
 - ii. for effective financial decision-making, management and control;
 - iii. to identify and manage material risks to compliance with the Conditions its Licence; and
- (c) failure to ensure the existence and effective operation of systems to ensure that it has in place personnel on the Board, reporting to the Board and within the rest of its organisation who are sufficient in number and appropriately qualified to ensure 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. Appropriateness of Undertakings

In considering the appropriateness of accepting the undertakings set out below, NHS Improvement has taken into account the matters set out in its Enforcement Guidance.

UNDERTAKINGS

NHS Improvement proposes to accept and the Licensee proposes to give the following undertakings, pursuant to section 106 of the Act:

1. 17/18 Recovery Measures

The Licensee must consider and take any immediate steps possible, while maintaining quality services, to rapidly improve its 17/18 financial position and implement grip and control measures as advised by the NHS Improvement Financial Improvement Director to improve upon and deliver the 17/18 forecast outturn position.

2. Financial recovery plan

2.1 The Licensee will identify, set out in writing and submit to NHS Improvement, no later than 3 working days before the Progress Review Check (defined below), the following:

2.1.1 a robust understanding of the underlying causes of the Licensee's financial position including the identification of any services driving losses, that need to be addressed to ensure the Licensee's financial recovery (the Diagnostic); and

2.1.2 taking into account the Diagnostic, a detailed financial recovery plan (FRP) that will deliver rapid financial recovery and which sets out a credible trajectory to deliver a significantly improved financial position in 2017/18 (excluding payments from the Sustainability and Transformation Fund ('STF'), given the current forecast exit position and run rate for 17/18.

2.2 The scope and detailed content of the FRP must be agreed with NHS Improvement but must:

2.2.1 be quality-assured and agreed by the board of the Licensee (including incoming substantive appointees);

2.2.2 set out actions that will move the Licensee to a position that is significantly better than the current financial position of the Licensee;

2.2.3 demonstrate quarter on quarter improvement in the underlying Income & Expenditure run rate in the financial year ('FY') 2017/18 and the monthly financials (year-to-date and run rate) to be included for FY 2017/18;

2.3.4 include a high level milestone plan for delivery of the Licensee's key schemes to deliver the FRP;

2.3.5 set out the capacity the Licensee has, or will, put in place to deliver the FRP;

2.3.6 explain how the Licensee is addressing the underlying causes of the deficit;

2.3.7 set out the monthly phasing of the Trust's financial forecast for FY 2017/18 (including the Licensee's internal assurance approach);

2.3.8 include details of the Licensee's internal assurance approach around 2017/18 Cost Improvement Plans ('CIPs');

- 2.3.9 include a summary of the stage of CIP development, supported by schedules showing a scheme by scheme assessment;
- 2.3.10 set out proposals for accelerated sub-scale service consolidation or closure, if applicable;
- 2.3.11 include a review of any planned investments (capital and revenue);
- 2.3.12 set out details of progress against and further steps on delivering the efficiencies set out in the Carter Review¹;
- 2.3.13 explain how the Licensee will improve its billing processes;
- 2.3.14 explain how the Licensee will deliver opportunities in non-pay spend and estates;
- 2.3.15 explain how the Licensee will deliver opportunities in pay spend including progress against and further steps on:
 - i. reducing agency and locum spend;
 - ii. consultant job planning and how this will achieve additional productivity;
 - iii. other workforce reviews and productivity savings;
- 2.3.16 actions the Licensee is taking to manage cash and minimise requirements for cash draw-downs from the Department of Health;
- 2.3.17 details of extra controls and other measures the Licensee has put in place since being placed into financial special measures to immediately strengthen financial control;
- 2.3.18 a timetable for substantive appointment to and commencement of key leadership posts.

3. FRP delivery

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

4. Financial Improvement Director

4.1 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 FRP.

¹ *Operational Productivity and Performance in English Acute Hospitals: Unwarranted Variations* Lord Carter of Coles, February 2016

- 4.2 The Licensee will provide the Financial Improvement Director and their team with full access to the Licensee's key personnel, meetings, resources and information during the Financial Special Measures period.
5. Financial Control
- 5.1 The Licensee will comply with any arrangements specified by NHS Improvement for the approval of the Licensee's decisions on expenditure.
- 5.2 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.
6. Reporting
- 6.1 The Licensee will meet with the NHS Improvement Executive Sponsor and other representatives of NHS Improvement, including the Financial Improvement Director, for a 'Progress Review Check' at a date to be agreed with NHS Improvement, but expected to be approximately six weeks from 10 April 2017. The purpose of the Progress Review Check is to consider the Licensee's understanding of the underlying causes of the financial position and the FRP and to determine the Licensee's progress in meeting the undertakings set out above.
- 6.2 The Licensee will attend other meetings or, if NHS Improvement stipulates, conference calls, during the period of Financial Special Measures to discuss its progress. 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.
- 6.3 The Licensee will provide to NHS Improvement direct access to its advisors, its board members, and any other members of its staff considered necessary by NHS Improvement, as needed in relation to the matters covered by these undertakings.
- 6.4 The Licensee will comply with any additional 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 ANY ADDITIONAL LICENCE CONDITION IMPOSED UNDER SECTION 111 OF THE ACT AND THOSE CONDITIONS RELATING TO:

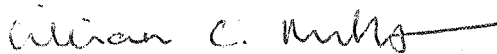
- **COMPLIANCE WITH THE HEALTH CARE STANDARDS BINDING ON THE LICENSEE; AND**
- **COMPLIANCE WITH ALL REQUIREMENTS CONCERNING QUALITY OF CARE.**

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 106 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: 28/6/17

NHS IMPROVEMENT



Signed (Chair of relevant decision-making committee)

Dated: 4/7/17