

## **Appendix 3: Enforcement Undertakings**

### **ENFORCEMENT UNDERTAKINGS**

#### **LICENSEE:**

Tameside and Glossop Integrated Care NHS Foundation Trust ("the Licensee")  
Fountain Street  
Ashton-under-Lyne  
OL6 9RW

#### **BACKGROUND**

In September 2015, NHS Improvement accepted undertakings from the Licensee regarding its future operation and compliance with its Licence. In particular, these reflected an undertaking to accept and implement the recommendations of the final report from PricewaterhouseCoopers LLP dated 28<sup>th</sup> July, 2015 (the 'CPT report'). The Licensee is at the end of year 2 of the Five Year Strategy following the receipt of the Greater Manchester Transformation Funding.

The Licensee is continuing to work to implement the CPT recommendations, having regard to the progress made with partners in the local health economy, and also the development of a strategy by Greater Manchester Health and Social Care Partnership (GMHSCP). The undertakings given below supersede the undertakings given by the Licensee in September 2015 and reflect that the CPT will no longer deliver a balanced position and a refreshed Sustainability Plan is required that reflects the GMHSCP strategy for District General Hospitals

#### **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.

#### **GROUND**

##### **1. Licence**

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

## **BREACHES**

### **2. 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(5)(a),(d),(f) and (g).

2.2 In particular, the Licensee:

- 2.2.1 has reported annual deficits of £23m (2015/16) and £13m (2016/17)
- 2.2.2 has an annual plan for deficits of £24m in 2017/18 and £23m in 2018/19 (excluding Provider Sustainability Funding);
- 2.2.3 has negative net assets and an expected requirement for borrowing £19m via Department of Health working capital facility in 2018/19.

2.3 The matters set out above are as a consequence of historic failure of governance and financial management by the Licensee, including, in particular:

- 2.3.1 a failure to establish and effectively implement systems and/or processes:
- (a) to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
  - (b) 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);
  - (c) to identify and manage (including but not restricted to manage through formal plans) material risks to compliance with the Conditions of its License; and
  - (d) to generate and monitor delivery of business plans (including any changes to such plans) and to receive internal and where appropriate external assurance on such plans and their delivery.

2.4 Need for action

NHS Improvement believes that the action which the Licensee has undertaken to take pursuant to the undertaking recorded here 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. Finance

- 1.1 The Licensee will take all reasonable steps to improve its financial position and minimise its external funding requirement. The Licensee will take all reasonable steps to deliver its services on a financially sustainable basis, including but not limited to the actions outlined below:
- 1.1.1 The Licensee will, as a minimum, deliver no more than the deficit of £23.370m (excluding Provider Sustainability Funding) set out in the Licensee's 2018/19 Operating Plan, unless agreed with NHS Improvement.
  - 1.1.2 The Licensee will by 30 June 2018, submit a Board approved diagnostic ("the Financial Diagnostic") identifying the causes of the Licensee's financial performance.
  - 1.1.3 The Licensee will by 30 June 2018 submit a Board approved a financial plan ("the Financial Plan"), based on the findings of the diagnostic that delivers the savings opportunities available to the Trust as appropriate and agreed with NHS Improvement. This plan will represent the baseline trading position onto which 1.1.5 and 1.1.6 below are overlaid.
  - 1.1.4 The Licensee will agree the Financial Plan with NHS Improvement.
  - 1.1.5 The Licensee will actively engage with the local health economy (Tameside and Glossop Clinical Commissioning Group and Tameside Metropolitan Borough Council) to develop a recovery plan by 30<sup>th</sup> August 2018. This plan will i) identify additional savings opportunities that can be delivered as appropriate and agreed with NHS Improvement; ii) the residual system deficit that will need to be addressed through the District General Hospital review by The Greater Manchester Health and Social Care partnership
  - 1.1.6 The Greater Manchester Health and Social Care Partnership have agreed to conclude a District General Hospital review- by 31<sup>st</sup> December 2018. Should this deadline be met, the Trust will submit a sustainable financial plan (the 'Sustainability Plan') to NHS Improvement by 31<sup>st</sup> March 2019, unless agreed with NHS Improvement.
  - 1.1.7 Once the Sustainability Plan has been agreed with NHS Improvement, the Licensee will take all reasonable measures within its control to implement the actions of the Sustainability Plan, within timescales agreed with NHS Improvement.
  - 1.1.8 Where matters are identified which materially affect the Licensee's ability to meet the agreed requirements of the Financial Plan and/or the Sustainability Plan, whether identified by the Licensee, NHS Improvement or another party, the Licensee will notify NHS Improvement (if NHS Improvement is not aware of the matter) as soon as practicable, and update and resubmit the Financial Plan and/or Sustainability Plan within a timeframe to be agreed with NHS Improvement.

1.1.9 The Licensee will implement sufficient programme management and governance arrangements to enable delivery of the actions in the Financial Plan and Sustainability Plan.

2 Funding conditions and spending approvals

- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 The Licensee will comply with any spending approvals processes that are deemed necessary 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 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: 14 June 2018

**NHS IMPROVEMENT**

*Linda Buckley*

**Linda Buckley**

**Signed (Delivery and Improvement Director, Greater Manchester and Lancashire)**

**Dated 11 June 2018**

