

## **ENFORCEMENT UNDERTAKINGS**

### **LICENSEE:**

Royal Orthopaedic Hospital NHS Foundation Trust (“the Licensee”)  
Bristol Road South  
Northfield  
Birmingham  
B31 2AP

### **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”.

### **GROUND**

#### 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: FT4(4)(a), FT4(5)(a), (f), and FT4(6)(a), (c), (d), (e), (f), and FT4(7).

2.2 In particular:

- 2.2.1 In September 2016, an audit report (“the audit report”) highlighted a number of significant issues around RTT, including poor knowledge and understanding of RTT rules amongst the Licensee’s staff, and poor management of the waiting list.
- 2.2.2 In January 2017, an internal review on cancer wait times highlighted concerns regarding the way in which cancer waiting times were being tracked and reported.
- 2.2.3 The Licensee has yet to finalise a medium-term solution to its strategic options and has not produced any evidence of key milestones to drive progress on this.
- 2.2.4 The Licensee may not have sufficient management capacity to ensure the delivery of the required recovery.

- 2.2.3 These matters demonstrate a failure of the Licensee’s corporate governance arrangements, in particular but not limited to failures to-
- (i) establish and effectively implement systems and/or processes to ensure compliance with the Licensee’s duty to operate efficiently, economically and effectively.
- 2.3 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. Operational issues

- 1.1. The Licensee will commission an independent third party agreed by NHS Improvement to review the Licensee’s current cancer reporting process and management of cancer pathways (“the cancer review”), the scope and timing of the cancer review to be agreed by NHS Improvement.
- 1.2. The Licensee will, by a date specified by NHS Improvement, develop and submit for approval to NHS Improvement an action plan (“the integrated action plan”).
- 1.3. The Licensee will agree the scope and detailed content of the integrated action plan with NHS Improvement, but will ensure it includes:
- 1.3.1 actions to address the data quality issues relating to RTT reporting and to ensure that the Licensee is in a position to accurately report on its RTT performance, by a date agreed NHS Improvement.
  - 1.3.2 actions and a trajectory to ensure improvement in RTT performance against the constitutional standards, including for each of its key services (to be agreed with NHS Improvement) but not limited to:
    - 1.3.2.1 plans to model demand and capacity;
    - 1.3.2.2 plans to resolve any demand or capacity shortfalls;
    - 1.3.2.3 plans to improve the management of the waiting list.
  - 1.3.3 actions and a trajectory to work with the system to resolve the 52 week waiters;

- 1.3.4 actions to address the findings from the cancer review;
  - 1.3.5 actions to address the data quality issues relating to cancer reporting and to ensure that the Licensee is in a position to accurately report on its cancer performance, by a date agreed with NHS Improvement;
  - 1.3.6 actions to ensure improvement in cancer performance against the constitutional standards.
  - 1.3.7 details of how the Licensee will deploy sufficient resource and expertise to ensure implementation of the integrated action plan;
  - 1.3.8 details of the Licensee's governance arrangements for approval and delivery of the integrated action plan, and how progress in terms of operational performance and delivery milestones will be reported and escalated upwards through to the Board.
- 1.4. The Licensee will commission an independent third party agreed by NHS Improvement to externally assure the integrated action plan, the scope and timing of the assurance to be agreed by NHS Improvement.
- 1.5. The Licensee will modify the integrated action plan if needed following input from NHS Improvement and the independent third party after they have received and considered it.
- 1.6. The Licensee will demonstrate that it has sufficient executive capacity to enable delivery of the integrated action plan.
- 1.7. The Licensee will develop and agree with NHS Improvement a set of Key Performance Indicators (KPIs) to assess the impact and performance of the integrated action plan.
- 1.8. Unless otherwise agreed with NHS Improvement, the Licensee will deliver all the actions in the integrated action plan or demonstrate that it is able to, in accordance with timescales agreed by NHS Improvement and will, if deemed necessary by NHS Improvement, commission external assurance on the accuracy of the Licensee's reported performance and/or delivery of this plan. The form, timing, and scope of this assurance will be agreed by NHS Improvement.
- 1.9. The Licensee will keep the integrated action plan and its delivery under review. Where matters are identified which materially affect the Licensee's ability to deliver the integrated action plan, whether identified by the Licensee or another party, the Licensee will notify NHS Improvement as soon as practicable and update and resubmit the integrated action plan within a timeframe to be agreed with NHS Improvement.

## 2. Governance

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

- 2.2 The Licensee will, by a date to be agreed by NHS Improvement, develop and submit for approval by NHS Improvement, a plan to address any shortfalls and recommendations identified by the external review.

### 3. Strategy

- 3.1 The Licensee will, by a date to be agreed by NHS Improvement, develop and submit for approval by NHS Improvement, a plan with key milestones to progress its strategic direction.
- 3.2 The Licensee will amend this plan to reflect any comments from NHS Improvement.

### 4. Access

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

### 5. 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 operational issues, the progress of delivery of its integrated action plan and to demonstrate significant progress in improving operational performance.

### 6. General

- 8.1 The Licensee will implement sufficient programme management and governance arrangements to enable delivery of the integrated action plan 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 integrated action plan 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 integrated action plan and for meeting all other commitments in these undertakings.

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.

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**

A handwritten signature in black ink, appearing to read 'Y. H. Buckle'.

**Signed (Chair of Licensee)**

**Dated:** 23 June 2017

**NHS IMPROVEMENT**

A handwritten signature in black ink, appearing to be a stylized name.

**Signed (Chair of Regional Provider Support Group (Midlands and East))**

**Dated:** 26 June 2017