

## **ENFORCEMENT UNDERTAKINGS**

### **NHS TRUST :**

Walsall Healthcare NHS Trust ("the Trust")  
Moat Road,  
Walsall,  
West Midlands,  
WS2 9PS

### **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.

### **GROUND:**

#### **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**

2.1. NHS Improvement has reasonable grounds to suspect that the Trust has provided and is providing health care services for the purposes of the NHS while failing to establish, implement effectively or apply the systems, standards and/or processes referred to in the following conditions of the licence issued by Monitor under Chapter 3 of Part 3 of the Health and Social Care Act 2012: FT4(5)(a) to (e), and FT4(6)(a) to (f).

2.2. In particular:

#### ***Quality Issues***

2.2.1. An inspection of the Trust by the Care Quality Commission (CQC) in September 2015 resulted in the Trust being given an overall rating by the CQC of "Inadequate" with the safe, effective and well led domains also being rated inadequate.

2.2.2. The overall concerns focused on the Trust's maternity and gynaecology services and urgent and emergency services where the Trust has two inadequate ratings. Further details are contained in the CQC's report dated 26 January 2016, the "CQC Report".

### *Operational performance*

- 2.2.3. The Trust breached the A&E 4 hour waiting time target for 15 consecutive quarters from Q1 2013/14 and did not deliver its recovery trajectory in 2016/17.
- 2.2.4. The Trust did not report against the Referral to Treatment standard (RTT) between March 2014 and November 2016, and has not met the target since December 2013, or delivered its recovery trajectory.

### *Financial Issues*

- 2.2.5. For 2016/17 the Trust delivered a significant negative variance against its control total plan. The control total for 2016/17 was a deficit of (£14.6m), excluding STF. The Trust actually delivered an outturn deficit of (£23.5m), excluding STF.
- 2.2.6. The Trust has rejected its 2017/18 control total deficit of (£10.95m), excluding STF, and is planning for a deficit of (£20.5m). The Trust's financial recovery trajectory plans for a deficit of (£12.5m) in 2018/19.
- 2.2.7. The Trust is in receipt of cash support from the Department of Health and does not yet have a financial plan to return to a sustainable financial position.
- 2.2.8. The Trust 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, and is currently receiving enhanced oversight scrutiny.

### *Failures and need for action*

- 2.3. These failings by the Trust demonstrate a failure of governance and financial management including, in particular:
  - (a) failure to establish and effectively implement systems or processes:
    - i. to ensure compliance with the Trust's duty to operate efficiently, economically and effectively,
    - ii. for timely and effective scrutiny and oversight by the Board of the Trust's operations,
    - iii. ensure compliance with healthcare standards binding on the Trust,
    - iv. to ensure that the Trust's services are safe and of sufficient quality; and
  - (b) failure to establish and effectively implement or apply systems, standards and/or processes:
    - i. of corporate and financial management suitable for a provider of NHS services and which provide reasonable safeguards against the risk of being unable to carry on as a going concern; and
    - ii. for effective financial decision-making, management and control.

### 2.4. 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 governance failures in question do not continue or recur.

## **UNDERTAKINGS**

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

### **1. Quality and Improvement Plan**

- 1.1. The Trust will take all reasonable steps to address any CQC concerns in accordance with such timescales as determined by the CQC.
- 1.2. The Trust will take all reasonable steps to implement the actions set out in the Patient Care Improvement Plan approved by its Board on March 2016 and by stakeholders, including NHS Improvement, CQC and NHS England, on April 2016 ("the Patient Care Improvement Plan").
- 1.3. The Trust will modify the Patient Care Improvement Plan if needed following input from NHS Improvement.
- 1.4. The Trust will demonstrate that it is able to deliver the Patient Care Improvement Plan including demonstrating that it has sufficient capacity at both executive and other levels of management to enable delivery of the plans.
- 1.5. The Trust will keep the Patient Care Improvement Plan described above and its delivery under review and provide appropriate assurance to its Board regarding progress towards meeting the requirements of paragraphs 1.1 and 1.2, such assurance to be provided to NHS Improvement on request. Where matters are identified which materially affect the Trust's ability to deliver the Patient Care Improvement Plan, whether identified by the Trust or another party, the Trust will notify NHS Improvement as soon as practicable and update and resubmit the relevant plan(s) within a timeframe to be agreed by NHS Improvement.
- 1.6. The Trust will ensure that the delivery of the Patient Care Improvement Plan and other measures to improve quality and operational performance do not compromise its overall financial position. The Trust will keep the financial cost of its quality improvements under close review and will notify NHS Improvement as soon as practicable of any matters which are identified as potentially having a material impact on the Trust's overall financial position.

### **2. Operational performance**

- 2.1. The Trust will take all reasonable steps to recover operational performance to meet national standards, including but not limited to those set out in paragraphs 2.2 to 2.4, below.
- 2.2. The Trust will ensure that there is a robust operational performance plan (the "performance plan") in place to meet the requirements of paragraph 2.1, which has been agreed with NHS Improvement.
- 2.3. The performance plan will, in particular:
  - 2.3.1. include the actions required to meet the requirements of paragraph 2.1, with appropriate timescales, key performance indicators and resourcing;
  - 2.3.2. describe the key risks to meeting the requirements of paragraph 2.1 and mitigating actions being taken;
  - 2.3.3. be based on realistic assumptions;
  - 2.3.4. reflect collaborative working with key system partners and other stakeholders;

- 2.3.5. set out the key performance indicators which the Trust will use to measure progress;
  - 2.3.6. be consistent with the Trust's other key plans, including but not limited to those plans described elsewhere in these undertakings and the Sustainability and Transformation Plan; and
  - 2.3.7. support the Trust in delivering the control totals set by NHS Improvement.
- 2.4. The Trust will keep the performance plan and its delivery under review and provide appropriate assurance to its Board regarding progress towards meeting the requirements of paragraph 2.1, such assurance to be provided to NHS Improvement on request. Where matters are identified which materially affect the Trust's ability to meet the requirements of paragraph 2.1, whether identified by the Trust or another party, the Trust will notify NHS Improvement as soon as practicable and update and resubmit the performance plan within a timeframe to be agreed with NHS Improvement.

### 3. Finance and Recovery Plan

#### *Financial improvement plan*

- 3.1. The Trust will rapidly identify and set out in writing and submit for agreement to NHS Improvement by 30 June 2017:
- a robust understanding of the underlying causes of the Trust's financial position including the identification of any services driving losses, that need to be addressed to ensure the Trust's financial recovery (the Diagnostic); and
  - taking into account the Diagnostic, a detailed one-year financial recovery plan (FRP) to achieve or improve upon a deficit of £20.5m its 17/18 control total (excluding STP), given the exit position and run rate for 16/17.
- 3.2. The scope and detailed content of the FRP will be as agreed with NHS Improvement but will include:
- actions to address the key issues identified, including a high level milestone plan for delivery of the Trust's key schemes to deliver the FRP; and
  - the monthly phasing of, and governance, assurance and programme management arrangements to support delivery of the 2017/18 CIPs (including the Trust's internal assurance approach); and
  - details of extra controls and other measures the Trust 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; and
  - details of how the Trust will deploy sufficient resources to ensure implementation of the FRP; and
  - details of the Trust governance arrangements for approval and delivery of the FRP.
- 3.3. The FRP must be robust, quality-assured and agreed by the Trust's board.
- 3.4. When developing the plan, the Trust will engage effectively with key stakeholders, including commissioners, and will reflect their views appropriately in the FRP.
- 3.5. The Trust will, if deemed necessary by NHS Improvement, commission external support and/or assurance to assist it in developing the FRP. The provider and scope of the support and/or assurance will be agreed with NHS Improvement.
- 3.6. The Trust will take all reasonable steps to secure that it is able to deliver the FRP once approved by NHS Improvement.

### *Three-year Financial Recovery Plan*

- 3.7. The Trust will rapidly identify and set out in writing and submit for agreement to NHS Improvement by 31 January 2018:
- a detailed three-year financial recovery plan (FRP) which sets out how and when the Trust will return to financial balance (excluding STP), given the exit position and run rate for 17/18.
- 3.8 The scope and detailed content of the FRP will be as agreed with NHS Improvement but will include:
- actions to address the key issues identified, including a high level milestone plan for delivery of the Trust's key schemes to deliver the FRP; and
  - the monthly phasing of, and governance, assurance and programme management arrangements to support delivery of the CIPs (including the Trust's internal assurance approach); and
  - a credible trajectory to a surplus position; and
  - sets out at individual service level the trajectory for returning loss making services identified in the diagnostic to a break even position or to an agreed alternative delivery solution; and
  - details of extra controls and other measures the Trust 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; and
  - details of how the Trust will deploy sufficient resources to ensure implementation of the financial recovery plan; and
  - details of the Trust governance arrangements for approval and delivery of the FRP.
- 3.9 The FRP must be robust, quality-assured and agreed by the Trust's board.
- 3.10 When developing the plan, the Trust will engage effectively with key stakeholders, including commissioners, and will reflect their views appropriately in the FRP.
- 3.11 The Trust will, if deemed necessary by NHS Improvement, commission external support and/or assurance to assist it in developing the FRP. The provider and scope of the support and/or assurance will be agreed with NHS Improvement.
- 3.12 The Trust will take all reasonable steps to secure that it is able to deliver the FRP once approved by NHS Improvement

### *FRP delivery*

- 3.13 The Trust will demonstrate to NHS Improvement a period of successful implementation of its FRP and assurance of continued focus, capability and capacity to sustainably maintain financial recovery and deliver the FRP.
- 3.14 The Trust will if deemed necessary by NHS Improvement, appoint a Turnaround Director to support it in the delivery of the FRP.

### Distress Finance and Spending Approvals

- 3.15 Where interim support financing or planned term support financing is provided by the Secretary of State for Health to the Trust under Schedule 5 to the National Health Service Act 2006, the Trust will comply with any terms and conditions which attach to the financing.
- 3.16 Where the Trust receives payments from the Sustainability and Transformation Fund, the Trust will comply with any terms or conditions which attach to the payments.
- 3.17 The Trust will comply with any spending approvals processes that are deemed necessary by NHS Improvement.

### *Reporting*

- 3.18 Until a date determined by NHS Improvement, the Trust will attend monthly executive challenge meetings with NHS Improvement. The purpose of the challenge meetings is to consider the Trust understanding of the underlying causes of the financial position, the development of its FRPs and to demonstrate significant progress in delivering financial improvement.
- 3.19 As deemed necessary by NHS Improvement, the Trust will also attend weekly or fortnightly meetings or calls with NHS Improvement to review progress on delivery of the financial improvement actions.
- 3.20 The Trust will keep the FRP and FRP and its delivery under review and provide appropriate assurance to its Board regarding progress towards meeting the requirements of paragraph 3.7, such assurance to be provided to NHS Improvement on request. Where matters are identified which materially affect the Trust's ability to deliver the FRP and/or FRP, whether identified by the Trust or another party, the Trust will notify NHS Improvement as soon as practicable and update and resubmit the relevant plan(s) within a timeframe to be agreed by NHS Improvement.

## 4 Buddy Trust and other partner organisations

4.1 The Trust will co-operate and work with any partner organisations (this may include one or more 'Buddy Trusts') who may be appointed by NHS Improvement to:

- 4.1.1 support and provide expertise to the Trust; and
- 4.1.2 assist the Trust with the delivery of the Patient Care Improvement Plan and/or the improvement of its finances and the quality of care the Trust provides.

4.2 The Trust will work with any such partner organisation on such terms as may be specified by NHS Improvement.

## 5 Leadership and governance

5.1 The Trust will co-operate with any leadership and governance review commissioned by NHS Improvement.

5.2 The Trust must ensure that it has in place:

- a. sufficient and effective Board, management and clinical leadership capacity and capability; and
- b. appropriate governance systems and processes, to enable it to address the issues specified in paragraph 1 - 3 effectively.

## 6 Programme management

6.1 The Trust will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.

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

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

7 Access

7.1 The Trust will provide to NHS Improvement direct access to its advisors, programme leads and the Trust's board members as needed in relation to the matters covered by these undertakings.

8 Meetings and reports

8.1 In addition to the action in paragraph 2.7 (reporting in relation to Financial Recovery) the Trust will:

- 8.1.1 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; and
- 8.1.2 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 the NHS Improvement taking further formal action. This could include giving directions to the trust under section 8 of the National Health Service Act 2006.

**THE TRUST**

Signed (Chair or Chief Executive of Trust)



Dated 01/12/2017

**NHS IMPROVEMENT**

Signed (Chair of the Regional Support Group – Midlands and East)

Dated



19/12/17

