

## **ANNEX 1 ENFORCEMENT UNDERTAKINGS**

### **NHS TRUST:**

Wye Valley NHS Trust ('the Trust')  
Hereford County Hospital  
Stonebow Road  
Hereford  
HR1 2BN

### **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 establishment 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 services for the purposes of the health service in England while failing to comply with the following conditions of the Licence: FT4(5)(a) to (e), and FT4(6)(a) to (f).

2.2. In particular:

##### **Quality**

2.2.1. The Trust was inspected by the Care Quality Commission (CQC) in June 2018 which resulted in an Overall rating of 'Requires Improvement'. The Trust received 'Good' for Caring and 'Requires Improvement' for Safe, Effective, Well-led and Responsive. The Responsive domain improved from Inadequate

to Requires Improvement, however remained Inadequate for Surgery. Further evidence is set out in the CQC's report. The inspection resulted in 13 must-do and 37 should-do actions with three requirement notices. The Trust was also issued a section 29A notice in August 2018 as a result of ongoing concerns in Referral to Treatment (RTT) and waiting times across all specialities.

- 2.2.2. The Trust has been a statistical outlier for both SHMI and HSMR over an extensive period of time. SHMI has reduced to 1.12 for the period of April 2017 to March 2018 resulting in the Trust no longer being a published outlier. A further reduction has been observed since although the latest data is awaiting publication. In terms of HSMR, this indicator has reduced to 116.4 for the period of January 2017 to December 2017 and remains an outlier. The Trust continues to deliver and embed its mortality strategy and associated improvement actions.
- 2.2.3. The Trust reports a high vacancy rate for consultants and nursing workforce and subsequent excessive agency spend.

#### **Operational Performance**

- 2.2.4. The Trust has failed to achieve the A&E 4 hour waiting time since 2014 and did not deliver its recovery trajectory in 2017/18. The Trust has failed to achieve the RTT standard prior to 2014 with its best performance position reported as 80.2% in November 2017. The Trust has reported 52-week Referral to Treatment breaches, with the latest position of 81 breaches in November 2018. The Trust has not achieved the 2 week-wait cancer standard for breast patients during 2018/19 and is not delivering its recovery trajectory.

#### **Financial Position**

- 2.2.5. For 2017/18, the Trust agreed a revised control total of £31.3 million deficit and reported a year end deficit of £31.272 million (excluding STF) which represented a £5.9 million improvement on 2016/17. The deficit represents 16.6% of the Trust's (£188.498m). However, in June 2018 the Trust had a 'Use of Resources' inspection and was rated Inadequate based on historic performance of the Trust in 2015/16 and 2016/17. The Trust's cash flow position has been challenging with the Trust being dependent on revenue and capital loans. The total outstanding loans at 2017/18 year end was £103.58 million, excluding PFI liabilities of £48.5 million. In 2018/19, the Trust agreed a control total of £27.2 million deficit, before Provider Sustainability Funding (PSF). It formally revised its forecast outturn (at month 6) to a deficit of £31.1m, before PSF but the run rate has continued to deteriorate.
- 2.2.6. The Trust has significantly failed to deliver its agency ceiling for the last two years. The Trust's agency ceiling was £9.76m and its outturn in 2016/17 was £16.84m and in 2017/18 was £15.21m. The Trust's plan for 2018/19 was £8.9m but is forecasting £13.7m (as at October).
- 2.3. These failings by the Trust demonstrate a failure of governance arrangements including, in particular, failure to establish and effectively implement systems and/or processes:
- to ensure compliance with health care standards binding on the Trust;
  - for financial decision making, management and control (including but not restricted to appropriate systems and/or process to ensure the Trust's ability to continue as a going concern;

- to ensure compliance with the Trust's duty to operate efficiently, economically and effectively.

#### 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 failures to comply with the relevant requirements of the conditions of 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 identified in, but not limited to the CQC report, including carrying out the actions and warning notices set out in the CQC report in accordance with timescales as determined by the CQC such that, upon re-inspection by the CQC (such as any date CQC may determine), the Trust will no longer be found to be 'Inadequate' in any CQC domain (surgery).
- 1.2. The Trust will develop a comprehensive Quality Improvement Plan (QIP) submitted to NHS Improvement at a date to be determined and ensure its Board receives monthly updates on its progress. In addition, the Trust will share progress against QIP with NHS Improvement on a monthly basis to include progress against actions and mitigations.
- 1.3. The Trust will fully test out the effectiveness of its quality governance arrangements to ensure they are robust and effective.
- 1.4. The Trust will continue to deliver and embed its Mortality Strategy and associated improvement actions, and these must be linked to clear outcome measures. The Trust will ensure that its Board receives monthly progress updates pertaining to its Mortality Strategy and associated improvement actions and outcome measures. The Trust will be expected to continue to work closely with NHS Improvement, to provide assurance on progress and to ensure potential support needs are identified and will be required to continue to work collaboratively with Herefordshire CCG in support of mortality quality improvements.
- 1.5. The Trust will be required to continue to engage with NHS Improvement on workforce improvement strategies, including workforce and agency oversight meetings and associated collaboratives. NHS Improvement will undertake a focussed workforce/agency review and observe the Workforce Committee as part of this review.

#### 2. Urgent and Emergency Care

- 2.1. The Trust will take all reasonable steps in order to meet its projected operational performance and achieve sustainable compliance with the 4 hour A&E standard, in line with the Trust trajectory delivery of 90% by December 2018 and 95% by March 2019.

2.2. The Trust will submit to NHS Improvement an (updated) improvement plan to achieve compliance with the standard on a sustainable basis. The plan will be delivered in a timeframe to be decided by NHS Improvement.

### 3. Cancer

3.1. The Trust will take all reasonable steps to recover and sustainably maintain cancer performance in Cancer 62day, Cancer 2ww and Cancer 2ww breast by January 2019 in line with the agreed trajectories.

3.2. The Trust will produce and submit to NHS Improvement an action plan to achieve compliance with the 2ww and 62 day standard on a sustainable basis. The plan will be delivered in a timeframe to be decided by NHS Improvement

### 4. Elective Care

4.1. The Trust will take all reasonable steps to recover operational performance to meet its trajectory and clear all 52 week breaches by March 2019.

4.2. The Trust will work with commissioners to model and agree what a sustainable compliance with the RTT standards would require in terms of Trust capacity and commissioner affordability and then develop a delivery plan to achieve this. The plan will be delivered in a timeframe to be decided by NHS Improvement.

### 5. Financial Performance

5.1. The Trust will take all reasonable steps to deliver its 2018/19 financial plan as submitted to NHS Improvement on 20th June 2018. In particular, the Trust will ensure that robust arrangements are in place to maintain and strengthen financial control, reduce run rate, preserve cash and minimise the deficit.

5.2. The Trust will, by a date to be agreed by NHS Improvement, develop and submit a strategic financial plan with key milestones to monitor progress against the strategic direction.

5.3. The plan should include an understanding of the underlying causes of the Trust's financial position, including identification of any loss-making services to be addressed to ensure financial sustainability, any current issues (such as the requirement to deliver seven-day services) that impact on the Trust's ability to deliver financial sustainability, fragile services (either current or medium to long term) that require strategic planning and any system-wide changes that are planned under the Strategic Transformation Partnership (STP) that will impact the long term financial sustainability of the Trust.

5.4. The Trust will comply with any

- terms and conditions which attached to the interim support financing, provided by the Secretary of State for Health to the Trust under Schedule 5 to the National Health Service Act 2006
- terms and conditions attached to the Provider Sustainability Fund payments.
- spending approvals processes that are deemed necessary by NHS Improvement.

## 6. Agency Ceiling

- 6.1. The Trust will, by a date to be agreed by NHS Improvement, develop and submit an agency plan (AP). This plan should include detailed actions with clear timescales by when the Trust will achieve the agency ceiling.
- 6.2. The content of the AP will be agreed with NHS Improvement and is to include actions to address the key issues identified, including high level milestones for delivery of the Trust's key schemes, a phased monthly financial trajectory, governance processes, programme management arrangements to support delivery of the plan and a credible trajectory to achieve ceiling.

## 7. Programme management

- 7.1. The Trust will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.
- 7.2. Such programme management and governance arrangements must enable the board to:
  - obtain clear oversight over the process in delivering these undertakings;
  - obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and
  - hold individuals to account for the delivery of the undertakings.

## 8. Access

- 8.1. 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.

## 9. Meetings and reports

- 9.1. In addition to the action in paragraph 5.2 (reporting in relation to Financial Performance) 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; and
  - provide such reports in relation to the matters covered by these undertakings as NHS Improvement may require.

## 10. Partner organisation

- 10.1. The Trust will continue to co-operate and work with South Warwickshire NHS Foundation Trust and will:
  - accept support and expertise provided to the Trust; and
  - accept assistance provided to the Trust regarding the delivery of its Quality Improvement Plan and/or the improvement of its finances and the quality of care the Trust provides.

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 and paragraph 6 of the TDA Directions.

**THE TRUST**

Signed (Chair or Chief Executive of Trust)



SWALES, CEO

Dated 10/01/19.

**NHS IMPROVEMENT**

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

Dated



14/12/19